1951

K Damyanti

File No. S.DWR 3/51

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Suits Dharwar

In the Court of the Civil Judge (S.D.) Hubli

Civil Suit No. 72 of 1950

Govind Gopal Pai Plff

VS

The State of Bombay } Defts

P/Pfs 1/1 and oths.

For a declaration that the grant of permission to use the suit site for non agricultural purposes given on 18th Aug. 1941 is of permanent duration and for injunction restraining Govt. from demolishing the structure raised there on and restraining Defts Nos. 2 to 4 from interfering with the enjoyment and possession of the suit property by the Plff

Civil Appeal No. 338 of 1957

S.DWR 3/51

File No.

Bld. Secty. Slip 24-B

DWR

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Suits Dharwar

C. S. No. 72 of 1950.

Govind Gopal Pai

V/s.

State of Bombay and others

For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st Aug. ~~1941~~ 1941 is of permanent duration and for injunction restraining Govt. from demolishing the structures raised thereon and restraining defts Nos. 2 and to 4 from interfering with the enjoyment and possession of the suit property by the plff.

1-102

L.C.suit No. 72/1950.

In the Court of the Civil Judge, Senior Division, Hubli.

Plaintiff : Govind Gopal Pai, age 52, tea-shop owner Hubli.

vs.

Defendants: 1. Provincial Government Bombay.

2. Shrinivasrao Narayanrao Chitguppi, 39, landlord, Hubli.

3. Prahladrao Narayanrao Chitguppi, landlord, Hubli.

4. Vasantrao Narayanrao Chitguppi, landlord, Hubli.

In this, the written statement and objections of the defendant No.1 are as follows : -

1. The suit is false, vexacious and mala fide .

2. The plaintiff has no cause of action against this defendant to file this suit .

3. A suit of this nature cannot be filed against deft No.1.

4. The notice given under section 80 C.P.C. is not valid and legal .

5. The plaintiff cannot challenge the order of the Collector to which he is not a party at all.

6. The plaintiff is not a party to any of the proceedings before the Revenue Authorities and hence he cannot file this suit.

7. If there is any grievance of the plaintiff, it is against defts 2 to 4 and not against deft No.1.

8. Since plaintiff is not the owner of the suit site nor has he any concern with the Government order, he cannot claim declaration or injunction reliefs against Government .

9. It was comptent for defts 2 to 4 to file a suit of this nature, as they were the parties to the proceedings before the Revenue authorities .

10. This suit has been filed in collusion with the defts 2 to 4 just to delay the removal of the structure on the suit site.

11. The plaintiff alleges to be the lesee on the site, if so the privity of contract is between him and defts 2 to 4.

12. The defendant No. 1 has been unnecessarily added as party to this suit .

13. The orders of the Collector and the higher Revenue authorities are peffectly legal valid and binding on the parties and the plaintiff has no right to challenge any one of them.

14. The plaintiff is not entitled to possession against this deft.

15. The cause of action has been wrongly mentioned by the plaintiff, and no cause of action to this suit has arisen on that day.

16. This defendant is not responsible for whatever loss or damage the plaintiff may be put to .

17. Compensatory costs be awarded to this deft. as the plaintiff has knowingly filed this suit without any cause of action against this defendant.

18. Plaintiff has no right to get an interim injunction. The same may be vacated.

The plaintiff's suit against this Defendant be dismissed with costs.

Hubli,
11-5-1950.

Sub-Government Pleader.

Dharwar L.C. suit No.72 of 1950.

This is a suit for a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1-8-41 is of permanent duration, and for injunction restraining Govt. from demolishing the structure raised thereon and restraining defendants 2 to 4 from interfering with possession of the suit property.

The N.A. permission granted on 1-8-41 was only for five years. The Collector's order for the removal of the structure is therefore legal and valid.

The suit is defensible. The defense of the suit may be sanctioned on the lines of the accompanying brief.

The suit is fixed for W.S. on 2nd Dec. 1950.

The Sanction may be, please, be expedited.

29/11

A Solr:—

29-11

A.L.R. Sanction for the defence of the suit may be granted on the lines of the appended brief put up by me (W.S may immediately issue)

RK 29/11

RLA

Secy R.D. 30-11-50

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
29/11/50

X 16864
29/11/50

In the Court of the Civil Judge, Senior Division, Hubli.

L.C. Suit No.72 of 1950.

Govind Gopal Pai ... Plaintiff.

versus

The State of Bombay and others. ... Defendants.

In this, the written statement of defendant No.1 is as follows:-

1. The plaintiff's claim is false, vexatious and collusive.

2. The plaintiff's tenancy is not admitted. He is put to the strict proof of his rights, if any, in the suit ~~xxxxxxx~~ site.

3. The allegations made in the plaint that the non-agricultural permission granted to defendants 2 to 4 was for an unlimited period are denied. The Sanad in Form No.1 granted to defendants 2 to 4 on 1-8-1941 was for the erection of a temporary structure. Though the period has not been specifically mentioned, it is obvious that it was for a period of five years. Non-agricultural assessment was fixed for a period of five years as the non-agricultural permission was intended to be limited for a period of five years only.

4. ~~Immediately~~ Some months before the expiry of a period of five years defendants 2 to 4 applied for ~~a permanent~~ permission for ~~the~~ a permanent non-agricultural use of the land. This was refused. Then they applied on 10-7-1946 to the Collector for an extension of the non-agricultural use by five years. In this application they admitted that the previous permission was for a period of five years only. They made statements even before the Mamlatdar admitting that the previous permission was ~~x~~ for a period of five years only. These applications and admissions of defendants 2 to 4 would clarify the ambiguity, if any, in the Sanad about the period. Obviously the period for which non-agricultural permission was granted in 1941 was five years only.

5...

5. The plaintiff would be bound by the admissions and the statements made by ~~the~~ defendants 2 to 4. He would ~~not~~ be estopped from contending to the contrary.

6. Independent of defendants 2 to 4, the plaintiff has no right at all. Under the provisions of the Land Revenue Code, the occupant alone is entitled to the permission for a non-agricultural purpose. The tenant has no legal existence independent of the occupant so far as the permission for the non-agricultural use of the land is concerned. If defendants 2 to 4 cannot assert that the period for non-agricultural permission was more than five years, much less could the plaintiff do so.

7. The defendants 2 to 4 and plaintiff have collusively brought this suit to escape from the legal effects of the admissions and statements made by defendants 2 to 4. The claim is clearly malafide and hardly tenable.

8. The permission granted in 1941 was for a period of five years so as to coincide with the expiry of the tenancy of the plaintiff. Since the tenancy has expired the plaintiff can no longer claim any right to be on the land and to use it for a non-agricultural purpose.

9. The plaintiff had no right to erect a permanent structure on the land. Such structure being opposed to the terms of the Sanad, the order of eviction even on that ground was clearly lawful.

10. The period of five years having already expired, the permission granted under the Sanad ceased to be operative. Hence the plaintiff could be evicted and the structure could also be removed. The plaintiff having no right to put up a costly structure would not be entitled to claim any damages by reason of such eviction.

11. The plaintiff would be bound by the Collector's order of eviction.

12. As the structure raised is within the prohibited distance of one hundred feet from the centre of the ~~hospital~~ Hubli Sholapur Road - the Provincial Highway - the Collector was also justified in passing an order for the removal of

the...

9+17

the structure.

13. The plaintiff has no right to ask for an injunction, The interim injunction granted should be vacated. The plaintiff has no cause of action against this defendant.

For these and other reasons the plaintiff's suit against this defendant fails and should be dismissed with costs.

District Government Pleader.

I,_____ District Government Pleader, _____, do hereby declare that what is stated in paragraphs 1 to 13 above is true according to the information received and believed to be true. This verification is made at _____ on the _____ day of _____ 1950.

District Government Pleader.

No.16918 24

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Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 30th Nov 1950

Subject:- Dharwar L.C. Suit No 72/50

MEMORANDUM.

The ~~District~~ Sub Government Pleader, Hubli, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written statement~~ is sent herewith in advance. The W.S. is already sent to you under office no 16962 dtd 23rd Nov 1950

Papers of the case in files seven received from the Collector accompany.

For Remembrancer of Legal Affairs.

To

The ~~District~~ Sub Government Pleader, Hubli

Issued up 30/11 Subs forsd

kam. 20.4.50.

30/11

Asstt.

G.A.L.D. no. 809 B 12-1-51
sent to Press.
18/1

Await press copies.

17/1

† *Suits :*

Dharwar.

For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August 1941 is of permanent duration and for injunction restraining Government from demolishing the structure raised thereon and restraining Defendants Nos. 2 to 4 from interfering with the enjoyment and possession of the suit property by the Plaintiff.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 807.

Bombay Castle, 12th January 1951.

Letter from the Collector of Dharwar, No. LAW. 506, dated the 16th May 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

In the Court of the Civil Judge (Senior Division), Hubli.

Civil Suit No. 72 of 1950.

Govind Gopal Pai ... ... Plaintiff;

versus

The State of Bombay and others ... ... Defendants.

Memorandum to the District Government Pleader, Hubli, No. 16918, dated the 30th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R. No. 807, L. D., dated the 12th January 1951.

To

*The Revenue Department,
*The Collector of Dharwar,
The District Government Pleader, Hubli (with two copies of the brief).

* With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

DHARWAR LOWER COURT SUIT No. 72 OF 1950.

Chronological Statement of Facts.

1. This is a suit for a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August 1941 is of permanent duration and for injunction restraining Government from demolishing the structure raised thereon and restraining defendants Nos. 2 to 4 from interfering with the enjoyment and possession of the suit property by the plaintiff.

2. The plaintiff alleges to be the lessee of the suit property from defendants Nos. 2 to 4.

3. On 6th June 1941 defendants Nos. 2 to 4 applied to the Collector, Dharwar, for non-agricultural permission of the suit site bearing C.T.S. No. 495/1-part, of the Rev. Survey No. 104A/2 of Keshavpur, Hubli. The Collector granted permission for non-agricultural use fixing the non-agricultural assessment for a period of five years only with effect from 1st August 1941 ; and a Sanad in Form No. NI under rule 87 (*b*) of the Land Revenue Rules was issued in the name of defendants Nos. 2 to 4.

4. On 28th January 1948, i.e., six months before the expiry of period of five years, the defendants Nos. 2 to 4 submitted an application to the Collector, Dharwar, for a permanent non-agricultural permission of the suit site for the purpose of erection of a tea shop and residential building. On 12th June 1946 the non-agricultural permission, asked for, was refused by the Collector under No. L.N.A.S.R. 557. The defendants Nos. 2 to 4, then put in second application on 10th July 1946, requesting an extension of non-agricultural permission for five years from 1st August 1946, but the application was refused. Again on 22nd October 1946 a third application for the same purpose was submitted but the same was also rejected.

5. The defendants Nos. 2 to 4 thereafter, preferred an appeal to the Commissioner, Southern Division, against the order of the Collector but the appeal was dismissed on 19th November 1948. On 2nd February 1949, the defendants Nos. 2 to 4 submitted an application to the Government but Government refused to interfere with the orders passed by the Commissioner, Southern Division, in the matter.

6. On 8th December 1949 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 24th February 1950 he filed the present suit in the Court of the Civil Judge, Senior Division, Hubli, and obtained an interim stay on the same day.

Grounds of Defence.

The plaintiff, who claims to be a tenant of defendants Nos. 2 to 4, contends that the Sanad issued for non-agricultural permission does not specify the period and consequently it is to be taken for an unlimited period with the result that Government would not be entitled to evicting. It is true that the Sanad issued in the present case in Form No. 1 under rule 87 (*b*) of Bombay Land Revenue Rules does not specify the period for which the non-agricultural permission has been granted. But undoubtedly the Sanad does specify that the permission granted is not for the erection of permanent building, and that the assessment imposed was for a period of 5 years in the first instance and liable to be revised thereafter. But the correspondence underlying the grant of this Sanad has to be taken into account in determining the period for which the permission was granted. Defendants Nos. 2 to 4 applied to the Collector on 4th June 1941 stating that their land bearing Survey No. 495 was proposed to be used for a non-agricultural purpose since they had leased it out to one Govind Gopal (the present plaintiff) for a period of five years. In their statement before the Collector they have clearly stated that the lease given to Govind Gopal was for a period of five years for the use of a tea shop for which purpose the land was proposed to be converted for a non-agricultural purpose. They have further clearly stated what kind of structure was to be errected for the tea shop. They have also stated that there is a tin shed which is used by the Social Club and that they would agree to remove it whenever required. Reading the application and their statements together it is apparent that the period for which the permission for non-agricultural use was sought was only five years; since otherwise they could have clearly stated and asked for permission for the use of the land for a non-agricutural purpose permanently. This is consistent with the terms of the Sanad in Form No. 1 which form is required to be used under rule 87(*b*) of the Bombay Land Revenue Rules whenever permission is given temporarily. As stated in the Sanad itself it was not a permission for the erection of a permanent structure on the land. This clearly implies that the permission must be construed to have been granted temporarily and as stated above, the application and the statements of defendants Nos. 2 to 4 clearly prove that the said temporary period was for five years only.

2. The inference that the permission was for a period of five years only is further re-inforced by the subsequent conduct and the applications of defendants Nos. 2 to 4. Before the period of five years expired these defendants applied to the Collector for a permission for permanent non-agricultural use of the land. When this was refused, they applied for an extension by a period of five years. In their statements before the Mamlatdar they

have clearly stated that the previous permission was for five years only. Even in their applications dated 10th July 1946 they have specifically mentioned that the permission granted in 1941 was for a period of five years which would expire on 31st July 1946 and that they were granted a Sanad accordingly. In view of these clear admissions, there would not be any difficulty in construing the Sanad as being operative only for a period of five years, on the expiry of which the permission ceased and unless fresh permission was obtained the land could no longer be used for a non-agricultural purpose.

3. It is likely that the plaintiff may contend that he is not bound by the statements contained in the applications and those made by the defendands Nos. 2 to 4 before the Revenue authorities that the period for which the non-agricultural permission was granted was for five years only. This must obviously be the ground which seems to have inspired the present suit for the defendants Nos. 2 to 4 could not in view of their statements, contend that the Sanad was for an unlimited period. But it would not be possible for the plaintiff to take such a stand. The plaintiff derives his interest as Lessee from his Lessors Nos. 2 to 4. He is said to be a privy in estate and the admissions made by his Lessors are binding on him under section 18 of the Indian Evidence Act. (See page 168 of Sircar's Evidence Act). Consequently, the admissions made by defendants Nos. 2 to 4 that the permission granted was for a period of five years only would be binding on him and it would not be open to him to contend that the said permission was for an unlimited period.

4. Under section 65 of the land Revenue Code, it is only the occupant who can apply for permission to convert his land for a non-agricultural purpose. The occupants in the present case are defendants Nos. 2 to 4. When permission is granted under section 65 the occupant is entitled to the use of the land for the non-agricultural purpose for a period for which it is granted. Independent of the occupants the tenant has no rights at all. Attention in this connection is invited to second part of section 66 which amply bears out the above statement. If defendants Nos. 2 to 4 are not entitled to the non-agricultural use of the land after the expiry of the period of five years—and it is so obvious from their statements and their applications—the plaintiff who claims to be their tenant, can have obviously no right to continue the non-agricultural use of the land after the expiry of five years. Under section 79A, the occupant can be summarily evicted if he is no longer entitled to use the land for non-agricultural purpose, to which use he has ceased to be entitled. In the circumstance the plaintiff cannot resist the order of eviction passed by the Collector.

5. Admittedly the plaintiff was first given lease of the land for a period of five years. He is now

claiming to be still in possession of the land as lessee even after the expiry of that period. If his lease has been extended, it must have been done willfully and collusively to circumvent the orders of the Collector. This being a *mala fide* purpose, it would not be open to the plaintiff to take advantage of his own defraud.

6. The Sanad itself indicates that the permission was granted for the erection of a temporary structure. If as alleged by the plaintiff he has erected a permanent structure it would involve a contravention of the terms of the Sanad whereby the eviction would certainly be lawful. (See paragraph 4 of the Sanad).

7. Lastly, it should be contended that if the plaintiff has erected any costly building, he did so at his own peril and would not be entitled to any damage by reason of his eviction. He has, as stated above, no right to maintain that the permission granted under the Sanad was for an unlimited period. He would not, therefore, be entitled to ask for any injunction.

For these reasons it should be contended that the suit fails.

3X 19

Received on 24-2-1950.

Registered on 24-2-1950.

Decided on 23-8-52.

Duration : 1 year, 5 months and 29 days.

In the Court of the Civil Judge, Senior Division,

at Hubli. Ex. 47.

Pleaders : -

L. C. Civil Suit No. 72 of 1950.

Sri.Nagarkatil.
" Bhate.

Govind Gopal Pai, age 52, Brahmin, tea-shop keeper, Hubli.

.....Plaintiff.

Against.

"B.R.Mathad. 1. The State of Bombay, Bombay. (The Government of the State of Bombay).

"V.R.Deshpa-nde. 2. Shriniwasrao Narayanrao Chitguppi, age 39, Brahmin, landlord, Hubli.

Do. 3. Pralhadrao Narayanrao Chitguppi, age 35 , Brahmin, landlord, Hubli.

Do. 4. Vasantrao Narayanrao Chitguppi, age 23, Brahmin, landlord, Hubli.....Defendants.

Claim Rs.65/-.

The plaintiff sues to declare that the grant of permission to use the suit property for non-agricultural purpose given on 1-8-1941 by the Collector is of permanent duration and to get an injunction against deft No. 1 restraining him from demolishing the building and against defts 2 to 4 from interfering in any way with the enjoyment and possession of the suit property by the plaintiff during the subsistence of the lease and to get costs.

He states that the suit property is in possession of plff as lessee from defts 2 to 4 since 1941 by virtue of lease

granted to him by defts 2 to 4 under registered deed and the plff has got a right to hold and possess the property described in - plaint upto 20-5-1967 with benefit of renewal of the lease at the option of plff and plff's name is shown in City Survey Records as a lessee from defendants 2 to 4. He states that the suit property was leased by defts 2 to 4 to plff in 1941 for the purpose of - erecting a tea shop thereon and he has erected a building at a cost of Rs. 5000/- and he is running a tea shop in it and for this purpose defts 2 to 4 applied to the Collector Dharwar for converting the suit property into non-agricultural holding for the purpose of erecting a building thereon and the Collector on the application of defts 2 to 4 passed an order on 1-8-1941 granting permission to use the suit property for non-agricultural purposes on certain conditions without any restriction about time and it was granted permanently and a Sanad has been issued in respect of this site to defts 2 to 4 and the restriction is with regard to the use of the building which was to be used for a tea shop only. He states that in the Sanad there is a clause to the effect that non-agricultural assessment has been fixed thereon for a period of 5 years from - 1-8-1941 in the first instance and that it could be revised later according to the rules provided in that behalf and this would indicate that the rate of assessment is subject to revision after the period of 5 years and not that the permission to use it for non-agricultural purpose was limited to a period of 5 years. He says that defts 2 to 4 under mistaken impression applied to the Collector for renewing the permission in 1946 instead of for revising the assessment if thought fit by the Collector and the Collector declined to extend the period taking an erroneous view of the terms of the Sanad and thereafter an appeal was preferred to the Commissioner, S. D. who confirmed the order of the Collector on 19-11-1948 and thereafter a revision petition was preferred to the Government who declined to interfere on 21-9-1949 and plff was not a party to these proceedings and he has no notice of the orders and therefore he submits that the Revenue authorities proceeded upon a wrong assumption that the permission was of a temporary nature. He says that the owners are now called upon to

remove the structure standing on the site in question and a notice is given that if it is not so removed it would be got removed at their costs and defts 2 to 4 have informed the plff that the building should be removed and they have no right to call upon the plff during the subsistance of the lease to remove the building or to inferfere with the peaceful enjoyment of the property by the plff. He states that the orders of the Revenue Authorities in question are illegal and they cannot go behind the terms of the order of the Collector passed on 1-8-1941 and the order of the Sanad are conclusive with respect to the permanent lease of the suit property for non-agricultural purposes subject to the conditions mentioned there and the orders are therefore ultra virew and inoperative and they have no binding effect and therefore the Revenue Authorities cannot call upon defts 2 to 4 or plff to demolish the building now standing on the site and defts 2 to 4 cannot interfere with the plff's enjoyment of the property and they cannot ask plff to remove the building during the subsistance of the lease and the building is a substantial one put up at a cost of Rs. 5000/- and it is of a permanent nature and the plff would be put to great and irrepairable loss if the above illegal order was to be executed and his business would be totally closed and the plff is entitled according to law remain in possession as a tenant without any interference from the defts and the orders of the Revenue authorities referred to above if executed affect plff prejudicially in the enjoyment of the property and therefore he has filed this suit. He says that a notice as required by Section 80 of the Civil Procedure Code is given to defendant No. 1.

Deft No. 1 states at Ex. 33 that the claim of the plff is false, vexatious and collusive and the notice given to deft No. 1 is not legal and valid, and that the plff's tenancy is not admitted and he is put to the strict proof of his rights if any, in the suit site. He states that the allegations made in the plaint that the non-agricultural permission granted to defts 2 to 4 was for an unlimited period are denied and the Sanad given was for the erection of a temporary structure. He states that though the

period has not been specifically mentioned it is obvious that it was for a period of 5 years and non-agricultural assessment was fixed for a period of 5 years as a non-agricultural permission was intended to be limited for a period of five years only. He states that some months before the expiry of the period of five years defts 2 to 4 applied for permission for a permanent non-agricultural use of the land and this was refused and then they applied on 10/7/46 to the Collector for an extension of the non-agricultural use by five years and therein they admitted that the previous permission was for a period of 5 years only and they admitted before the Mamlatdar that the previous permission was for the period of five years only and these applications and admissions of defts 2 to 4 would clarify the ambiguity if any, in the Sanad about the period and obviously the period was five years only. He states that the plff would be bound by the admissions and the statements made by defts 2 to 4 and he would be estopped from contending to the contrary and the plff has no right at all - independent of defts 2 to 4 and under the provisions of the Land Revenue Code the occupant alone is entitled to the permission for a non-agricultural purpose and the tenant has no legal existence independent of the occupant so far as the permission for the non-agricultural use of the land is concerned and if defts 2 to 4 cannot assert that the period of permission was for more than 5 years much less could the plff do so and defts 2 to 4 have - colluded and the suit is filed and the suit therefore is mala fide and it is not tenable. He states that the permission granted in 1941 was for a period of 5 years so as to coincide with the expiry of the tenancy of the plaintiff and as the tenancy expired the plff can no longer claim any right to be on the land and to use it for non-agricultural purpose. He states that the plff had no right to erect a permanent structure on the land and such structure is opposed to the terms of the Sanad and therefore the order of - eviction was clearly lawful and the period of five years having already expired the permission granted under the Sanad ceased to be operative and the plff could be evicted and the structure could also be removed and plff having no right to put up a costly structure

would not be entitled to claim any damages by reason of such eviction and therefore the plff is bound by the order of eviction issued by the Collector. He says that as the structure raised is within the prohibited distance of 100 feet from the centre of the Hubli Sholapur Road, the Collector was also justified in passing an order for the removal of the structure and the plff has no right to ask for an injunction and the interim injunction given should be vacated . He says that the plff has no cause of action against the deft and No. 1 and therefore the suit should be dismissed with costs .

Defts 2 to 4 state at Ex. 20 that they are the owners of the suit property and they have leased out the open site to the plff for a period of 10 years and he has constructed a building for housing a tea shop and they do not know of any correspondence between the plff and deft No. 1. They state that according to Government Notification dated 22/3/1950 it is required of the owners of open sites on either sides of National High Ways and Provincial High Ways to keep open 60 feet from the centre of the road while erecting their buildings. They state that the Plff has constructed his building beyond 60 ft. from the centre of the road and he has not committed breach of any Rule or Notification. They say that they are not necessary parties to the suit and the suit against them be dismissed with costs .

On these contentions the following issues are raised at Ex. 24 : -

1. Whether the notice given under section 80 C. P. C. is legal and valid ?
2. Whether plff proves his tenancy of the suit property?
3. Is it proved that the non-agricultural permission granted to defts 2 to 4 was for an unlimited period and not for 5 years ?
4. Is the plff estopped from raising contentions contrary to the statements and admissions made before the Revenue Authorities ?
5. Whether plff has any right of non-agricultural use independent of the occupants & as landlords ?

6. Whether plff proves that he has a right to erect permanent structures as against the terms of the Sanad ?

7. Whether plff can claim damages ?

8. Does plff prove that the order of the Collector for eviction is illegal and not binding on him ? Can he challenge the same ?

9. Is plff entitled to the declaration and injunction sought ?

10. What order ?

Answers : -

1:- No. 2:- Yes. 3:- No. 4:- Not estopped.
5:- No. 6:- No. 7:- No. 8:- No; No.
9:- No. 10:- As given below.

Reasons.

The statements of Govind Pai Ex. 33 and Shriniwas Ex. 34 are recorded for plff and the parties have not adduced any other oral evidence in the case .

The admitted facts of the case are that the defts 2 to 4 are the owners of the suit property and that on 4-6-41 they applied to the Collector Ex. 41 stating that they have leased the suit property to one Govind Gopal Pai for a period of 5 years and therefore order should be issued for using the property for non-agricultural purposes. Defts 2 to 4 leased the property to plff on 20/5/1941 for a period of 5 years agreeing to get a rent of Rs. 140/- and thereafter the plff executed a second rent note dated 19/10/1945 agreeing to pay Rs. 250/- as rent per year for a period of 11 years. The Collector issued a Sanad Ex. 37 to defts 2 to 4 dated 1/8/1941 in which it was stated that the suit land was used for a non-agricultural purpose i. e. for the purpose of a tea shop and not for a permanent building and that the assessment has been fixed for a term of 5 years from 1/8/41 at Rs. 29/12/0 per year . It is further stated there that on the expiry of the term the assessment would be liable to be revised in accordance with

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with the Land Revenue Code and the rules and orders made thereunder. The Sanad is written on Form No. 1 and it is stated at the top " Form of Sanad in cases where the assessment on land temporarily appropriated to non-agricultural purposes other than buildings is altered under Section 48 ". The order passed by the Collector is at Ex. 5 and is dated 2nd August 1941 . It is stated there " Permission is hereby granted to M/s. 1. Shriniwas, 2. Pralhad, 3. Vasant father Narayanrao Chitguppi of Hubli to use the S. No.....for N. A. purposes subject to the following building conditions....3. The building in the plot to be used for tea shop only.." . Thereafter the Sanad Ex. 37 was given. The plff had already constructed, it appears, a building in the suit property and it was condoned. On 26-1-46 deft No. 2 made an application Ex. 42 to the Collector to allow him to use the property permanently for non-agricultural purpose. On 10/7/46 defts 2 to 4 gave an application Ex. 43 to the Collector to grant a temporary permission for a further period of 5 years regarding the suit plot. The Collector passed an order, a copy of which, is at Ex. 36 . It is stated there " With reference to your and your ~~x~~ co-occupants joint application dated 10th July 1946 for the grant of N. A. permission to use City S. No. 495 for non-agricultural purposes temporarily for a further period of 5 years I am to inform you that your request is refused as the permission applied for cannot be granted under the standing orders of Govt. regarding the prevention of ribbion development". This was addressed to deft No. 2. Thereafter defts 2 to 4 filed an appeal to the Commissioner S. D. who dismissed the appeal . Defts 2 to 4 thereafter filed an appeal to the Government and it was also dismissed. Thereafter the plff gave a notice Ex. 35 to the defts and he has filed this suit .

Issue No. 1 :- The notice given by plff is at Ex. 35. It was given to deft No. 1. It is stated for deft No.1 that it is not legal and valid. It is stated that in para 7 the words are " The cause of action arose on and from 15-10-1949 when Mamlatdar Hubli issued a notice to defts 2 to 4 calling

upon them to pull down the building ". It is stated that defts 2 to 4 may have got a cause of action but the plff has not disclosed any cause of action for him to file the suit. In para 6 the plff has stated " The orders of the Revenue Authorities referred to above if, executed affect plff prejudicially in the enjoyment of the property ". Section 80 of the Civil Procedure Code states that no suit shall be instituted against Government without stating the cause of action, the name description and place of residence of the plff and the relief which he claims. The details given in the plaint are a bit different from those stated in the notice . In para 8 of the plaint it is stated that cause of action arose on and from 15-10-1949 when deft No. 1 called on defts 2 to 4 a nd this plff to remove the building and defts 2 to 4 called on plff to remove the building. When para 7 of the notice and para 8 of the plaint are compared it is seen that the plff disclosed no cause of action as against him in the notice and he has disclosed a cause of action as against him in the plaint. Therefore under section 80 it is seen that the notice as given is not proper and legal. I, therefore, find issue No. 1 in the negative .

Issue No. 2 :- The plff and deft No. 2 have stated that the defts 2 to 4 leased the suit property to plff for a period of 5 years at first and then for a period of 11 years Ex. 40. I therefore find the issue in the affirmative .

Issue No. 3 :- It is stated for the plaintiff that the Sanad is for a longer period than 5 years and that it cannot be restricted to 5 years and that therefore it was not necessary for defts 2 to 4 to make an application for getting permission to use the property for non-agricultural purposes. It is stated for plff that it is mentioned in the Sanad that the non-agricultural assessment may be varied at the end of 5 years and that this did not mean that permission to use the property was given for a period of 5 years only . It is true that time is not mentioned in the Sanad Ex. 37. But it is clear from the Sanad that it is for a temporary period and that it was not for an unlimited period. It is stated for plff that the remarks in the

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case The Secretary of State for India Vs. Abdul Hussen (29 Bom. L. R.) 1360 at 1352 are relevant. It is stated there " Though we are not dealing with a penal statute in the strict sense of the word neverthaless this is in the nature of a penal statute and therefore must be strictly considered in favour of the subject ". Reliance is also placed on the ruling, The Secretary of State for India Vs. Faradool, 36, Bom. L. R. 761 at page 776 it is stated " A grant is to be construed by its own terms and not by the previous or the subsequent conduct of the parties " . Reading the terms of the Sanad as a whole it cannot be said that the Sanad is for a permanent duration. The defts 2 to 4 had leased the property to plff for a period of 5 years and therefore they applied to get permission for on-agricultural use. At the end of 5 years defts 2 to 4 applied again for permission and the proceedings show that defts 2 to 4 wanted in 1941 permission for 5 years only. I, therefore, find that the non-agricultural permission granted to defts 2 to 4 was not for an unlimited period but was for a period of 5 years .

Issue No. 4 :- It is not shown for deft No. 1 as to how the plff is estopped as alleged. There can be no estoppel where a party is not misled and has not been induced to do something detrimental to his interest owing to the action of the other party . I, therefore, find the issue in the negative.

Issue No. 5 :- The plaintiff claims through defts 2 to 4 and he has got no rights in the property independent of defts 2 to 4. Therefore I find the issue in the negative .

Issue No. 6 :- In the plaint the plff has stated that the building in the suit property is a substantial one put up at a cost of Rs. 5000/- and that it is of a permanent nature and that the plff will be put to great and irreparable loss if the above illegal orders were to be executed and his business would be totally closed. In the Sanad Ex. 37 it is stated that there was to be tea shop but it was not to be a permanent building. Therefore it is seen that the plff has no right to construct a permanent building against the terms of the Sanad. It is not shown for plff as to how he has got a right to erect a permanent building as against

the terms of the Sanad . Therefore I find issue No. 6 in the negative.

Issue No. 7 : - No damages are claimed by plff in this suit and therefore I find the issue in the negative.

Issues 8 and 9 : - The Collector is the person who has got a right to give permission to use an agricultural land for non-agricultural purposes and in the present case he gave permission for a temporary period and defts 2 to 4 applied to get the time extended but their request was not granted by the Collector and thereafter they filed an appeal to the - Commissioner, S. D. and the copy of the order of the Commissioner is produced in the case. It is detailed order and after narrating the facts the Commissioner stated " Hubli is a big and growing city and it is not desirable to relax the condition of a marginal limit as it will create a bad precedent. The permission was granted for a temporary N. A. purpose i.e. for a tea shop and not for the construction of a pucca building . The contention of the appellant that they would be put to great hardship if the building is pulled down is therefore not tenable. I am, therefore, not prepared by recommend the request of the appellant to Govt." . It is stated for the plff and defts 2 to 4 that the Govt. have amended the rules regarding construction of buildings near - National High Ways and that according to them it is necessary to keep open 60 ft. from the centre of the road while erecting buildings close-by . If it is so, it is for the Collector to consider the point and not for the court and the plff and defts 2 to 4 may approach if they are advised the Collector in the matter. I, therefore, find the issues in the negative.

Order.

The suit is dismissed. The plff shall pay the costs of deft No. 1 and he and defts 2 to 4 shall bear their costs.

23-8-1951. Sd/- B. A. Chougule.

Civil Judge, S.D.

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Copy was applied for on :-

Clerk of the Court.

Copy was ready for deligery on :-

Clerk of the Court.

Copy was

Clerk of the Court.

Decree.

In the Court of the Civil Judge, Senior Division,
At Hubli.

Long Cause suit No. 72 of 1950. Exh. 48.

Plaintiff :- Govind Gopal Pai, age 52, Brahmin, tea shop Keeper, Hubli.

vs.

Defendant :- 1. The State of Bombay.
(The Government of the State of Bombay)
2. Shrinivasrao Narayanrao Chitguppi, age 39, Brahmin, landlord, Hubli.
3. Pralhadrao Narayanrao Chitguppi, age 35, Brahmin, landlord, Hubli.
4. Vasantrao Narayanrao Chitguppi, age 23, Brahmin, landlord, Hubli.

Claim Rs 65/-.

Plaint presented on 24-2-1950.
" registere on 24-2-1950.

The above named plff.respectfully begs to state as under :-

1) Description of property :- Property situate in Hubli Keshwapur bearing C.T.S.No. 495/1 forming part of R.S.No.104/A/1 total superficial area 952 sq.yds is the ownership of defts 2 to 4 and stands in their name in C.T.S. records.

2. The property described above is in the possession of plff as lessee from defts 2 to 4, since 1941, by virtue of lease -hold rights granted to him by defts 2 to 4 under registered deed. Plff by virtue of his leasehold rights has a

right to hold and possess the property described above upto 20-5-1957 with benefits of the lease at the option of plff. He is shown in C.T.S. extracts as lessee from defs 2 to 4.

3. The above described property was leased by defts 2 to 4 to plff in 1941 for the purpose of erecting a tea shop thereon. He has erected a building at a cost of Rs 5000/- and in running a tea shop in it. For this purpose defts 1 to 4 applied to the Collector of Dharwar for converting site in question into a non-agricultural holding for the purpose of erecting a building thereon. The Collector on the applications of defts 2 to 4 passed an order on 1-8-1941 granting permission to use the suit property for non-agricultural purposes, on certain conditions without any restriction about time. It was granted permanently. A sand has been issued in respect of this site to defts 2 to 4. The restriction is with regard to the use of the building that it should be used for a tea shop only.

4. In the Sanad there is a clause to the effect no agricultural assessment has been fixed thereon for a period of 5 years from the 1st of August 1941 in the first instance and that it could be revived later according to the rules in that behalf. It would indicate that the rate of assessment is subject to revision after the period of 5 years and not that the permission to use it for non-agricultural purposes was limited to a period of 5 years.

5. But it appears that defts 2 to 4 under a mistaken impression applied to the Collector for renewing the permission in 1946 instead for revising the assessment if thought fit by the Collector. The Collector declined to extend the period on an erroneous view of the terms of the Sanad. There-on an appeal was preferred to the Commissioner who confirmed the order of Collector in L.N.A.S.R. 671 on 19-11-1948. A revision was preferred to the Government but the Government interfere with this order of the Commissioner was not a party to these proceedings and he has orders. It is submitted with respect that the re proceeded upon a wrong assumption that the permissio

a temporary nature. They have now called upon the owners to remove the structure, standing on the site in question and a notice is given that if not so removed it would be got removed at their cost. Defts 2 to 4 have also informed the plff that the building should be removed. Defts 2 to 4 have no right to call upon the plff during the subsistance of the lease to remove the building or interfere in plff's peaceful enjoyment of the property.

6- It is submitted that the orders of the revenue authorities in question are illegal and unsustainable in law. It is not competent to them to go behind the terms of the orders of the Collector passed on 1-8-19 , the order and the sanad are conclusive with respect to the permanent use of the suit property, for nonagricultural purposes subject to the conditions mentioned there. The order of the Collector the commissioner and the Government ending in R.D.No.7788/ 21-9-1949 are therefore ultra vires and inoperative. They have no binding effect. The revenue authorities are therefore not entitled to call upon defts 2 to 4 or plff to de,olish the building now standing on the site. The defts 2 to 4 cannot interfere in plff's quiet enjoyment of the property or ask plff to remove the building during the subsistency of the lease. The building is the substantial one put up at a cost of Rs 5000/-. It is of a permanent nature. Plff would be put to great loss if the above illegal order were to veexecuted and his business would be totally closed.

7. The plff maintains that he is entitled in-law to remain in possession as a lessee without any interference from defts. The orders of the Revenue authorities referred to above if executed affect plff prejudicially in the enjoyment of the property. Hence this suit is for a declaration that the grant of permission to use the site in question given on 1-8-1941 by the Collector is of a permanent duration and for an injunction restraining deft No. 1 from getting the building demolished or pulled, also restraining defts 2 to 4 from interfering in plff's peaceful

and quiet enjoyment of the suit property as per terms of the lease and during the subsistancy of the lease.

8. The cause of action arose on and from 15-10-1949 when deft 1 No. 1 called on defts 2 to 4 and this plff to remove the building and defts 2 to 4 called on plff to remove the building.

9. Noice under section 80 of the C.P.C., is given to deft No. 1 and is acknowledged by him.

10. The suit is valued for Court fees at Rs 65/-, the suit being one for declaration and injunction fixed, fixed Court fee is paid. For the purpose of jurisdiction and pleader's fee, it is valued at Rs 65/-.

11. Hence the plff prays and claims

A) for a declaration that the grant of permission to use the suit property for non-agricultural purposes given on 1-9-1941 by the Collector is of permanent duration.

B) 12. For an injunction restraining deft No.1 from getting the building demolished or pulled and defts 2 to 4 from interfering in any way plff's enjoyment and possession of the property during the subsistancy of his lease.

C) and for costs of the suit and such other reliefs as the Court deems fit under the circumstances.

This suit coming on this day 23rd August 1951 for final disposal before Shri B.A.Chougle, Civil Judge, Senior Division in the presence of Shri. K.S.Nagarkatti and Shri. Bhate pleaders for plff and Shri. B.R-Mathad pleader for deft No. 1 and Shri. V.R. Deshapande for defts 2 to 4, it is hereby ordered and decreed as under :-

The suit is dismissed. The plff shall pay the costs of deft No.1 and he and defts 2 to 4 shall bear their own costs.

Bill of costs."

Costs of plff.		Costs of deft 1.	
Stamps for plaint Ex.1.	Rs 6-4-0	Stamps for applications	Rs 6-4-0
" for Wakalat Ex.2	1-4-0	Pleader's fees on Rs 65/- the minimum.	15-0-0
" for process Exs.6-11.	7-0-0	Total	21-4-0
" for applications. Ex.6,31,25, 26,27, 30.	3-12-0	Applications disallowed. Ex.9, 10,12,16, 17,19,22,22A,28, 46.	6-4-0
Pleader's fees on Rs 65/- the minimum.	10-0-0	Balance	15-0-0
Total	Rs 33-4-0		
Applications disallowed. Ex. 6,11,25,26,27,31	8-12-0		
Balance	25-8-0		

Costs of defts 2 to 4.

Stamps for Wakalat Ex. 14	0-10-0
" for applications.Exs. 15, 13, 22	1-14-0
Pleader's fees on Rs 65/- the minimum.	15-0-0
Total	Rs 17-8-0
Applications disallowed. Exs. 15,13,122.	1-14-0
Balance	15-10-0.

Given under my hand and seal of this Court on 23rd August 1951.

Sd. P.S.Kulkarni.
Karkun.

(Seal) Sd. B.A.Chougle.

Civil Judge, Senior Division.

6-9-1951.

Pleader for plff :- Sd. K.S.Nagarkatti.

Pleader.

Tuped by Compared by True Copy

Clerk of the Court.

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Suits:
Dharwar.
For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August 1941 is of permanent duration and for injunction restraining Government from demolishing the structure raised thereon and restraining Defendants Nos.2 to 4 from interferring with the enjoyment and possession of the suit property by the Plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 16679.
Bombay Castle, 20th October 1951.

Read Government Resolution, Legal Department No.807 dated the 12th January 1951.

Letter from the District Government Pleader, Dharwar No. 914 dated the 4th October 1951, forwarding copy of Judgment and stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Hubli on 23rd August 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Hubli. Civil Suit No.72 of 1950. Govind Gopal Pai..... Plaintiff. vs. The State of Bombay and others..Defendants.

"The suit is dismissed. The plaintiff shall pay the costs of defendant No.1 and he and defendants 2 to 4 shall bear their own costs."

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

original R.T.Katarki

R.T.Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar.

KML/19/10.

Sd/- 19/10

Sd/- 19/10 D.S.

28/

Subject after issue
file in S. Doc. 3/57

DC 22/10

CAS. E.S.

ಅಪೀಲಿನಲ್ಲಿ ಪ್ರತಿವಾದಿ

~~ಫಿರ್ಯಾದಿ ಅರ್ಜಿದಾರ~~
~~(ಅರ್ಜಿದಾರ, ಪ್ರತಿವಾದಿ)~~

~~(ಪ್ರಾಸಿಕ್ಯೂಷನ್ ಸಾಕ್ಷಿ)~~
~~(ಡಿಫೆನ್ಸ್ ಸಾಕ್ಷಿ)~~

ಬಿ.ಎಲ್.ಆರ್. ಧಾರವಾಡ ದ ಮುಖ್ಯ ಜಿಲ್ಲೆ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ 37

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಇಲ್ಲಿ. ನಿಂ॥

ದಿವಾಣೀ ~~ಕ್ರಿಮಿನಲ್ ಮೂಲ ಅರ್ಜಿ~~ ನಂಬರು 337 ಸನ್ ೧೯ 77 ನೇ ಪೈಕಿ

CA 338/57

ಪಿಟೀಲು ಅಪೀಲು

ಗೋವಿಂದ ಗೋಪಾಲ ಚೌ ಮಾಳಾಪುರ

} ವಾದಿ ಅಪೀಲುದಾರ

ವಿರುದ್ಧ

ಬಾಂಬೆ ಸರಕಾರ (The state of Bombay) (The Government of the state of Bombay)

} ಪ್ರತಿವಾದಿ ಇವರಿಗೆ.

ಬಾಬ್ತಿಗೆ

* ಹೆಸರು, ವರ್ಣನೆ ಮತ್ತು ವಾಸಸ್ಥಳ.

ಗೋವಿಂದ ಗೋಪಾಲ ಚೌ ಮಾಳಾಪುರ ಧಾರವಾಡ ಅಪೀಲುದಾರರಲ್ಲಿ

ಮೇಲಿನ ಫಿರ್ಯಾದಿ ಮೂ.ಡಿ. ಕೋರ್ಟಿನ ದಾವೆ ನಂ. 2 ನೇ ಪೈಕಿ ಕಾಗದ-ಪತ್ರಗಳಲ್ಲಿ

ಈ ತಂಬೆ ಮುತ್ತು ಪರಯ ಚಾರ್ಲ ಅಪೀಲು ಮಾಡಿದ್ದರಿಂದ

ಸದರಿ ಹಾಜರಾತಿಯನ್ನು ಮಾಡಿಸುವ ಕಾರಣ, ಸದರೀ ಜವಾಬು ಕೊಡಲಿಕ್ಕೆ ಈ ಲೇಖದಿಂದ ನಿನಗೆ ಸಮನು ಮಾಡಲ್ಪಟ್ಟಿದೆ. ನೀನು ಸ್ವತಃ ಯಾ ವ್ಯಾಜ್ಯವನ್ನು ಪೂರಾ ತಿಳಿಸಿಕೊಂಡಂಥ ವಕೀಲನ ಮುಖಾಂತರ ವಾಗಿ ಸನ್ ೧೯ 78 ನೇ ಮಾರ್ಚ ತಿಂಗಳ 13 ನೇ ತಾರೀಖಿನ ಬೆಳಿಗಿನ / ಸಂಜೆಯ ಘಂಟೆಗೆ ಈ ಕೋರ್ಟಿನಲ್ಲಿ ಹಾಜರಾಗಬೇಕು; ವಕೀಲ ಮುಖಾಂತರವಾಗಿ ಹಾಜರಾದರೆ ಈ ದಾವೆಗೆ ಸಂಬಂಧಿಸಿದ ಯಾವತ್ತೂ ಮಹತ್ವದ ಸವಾಲುಗಳಿಗೆ ಜವಾಬು ಕೊಡಲಿಕ್ಕೆ ಅವನನ್ನು ಸಮರ್ಥನಾಗಿರಬೇಕು, ಅಥವಾ ಅಂಥ ಸವಾಲುಗಳಿಗೆಲ್ಲ ಜವಾಬು ಕೊಡಲಿಕ್ಕೆ ಸಮರ್ಥನಾದ ಮತ್ತೊಬ್ಬ ಮನುಷ್ಯನನ್ನು ಆ ವಕೀಲನ ಕೂಡ ಬರಬೇಕು. ಮತ್ತು ಆ ದಿವಸ ನಿನ್ನ ಜವಾಬಿನ ಪುರಾವೆಗಾಗಿ ನೀನು ಆಶ್ರಯಿಸಲಿಕ್ಕೆ ಅಪೇಕ್ಷಿಸುವಂಥ ಎಲ್ಲ ದಸ್ತಾವೇಜುಗಳನ್ನು ನೀನು ಹಾಜರು ಮಾಡಬೇಕು.

ಈ ಲೇಖದಿಂದ ನಿನಗೆ ತಿಳಿಸ್ಪಡದೇನೆಂದರೆ ಸದರೀ ಬರೆದ ದಿನ ನೀನು ಹಾಜರಾಗದಿದ್ದರೆ ನಿನ್ನ ಪರೋಕ್ಷದಲ್ಲಿ ದಾವೆಯ ಚೌಕಸಿ ಆಗಿ ಅನು ನಿರ್ಣಯಿಸಲ್ಪಡುವದು.

ಮತ್ತು ನಿಮಗೆ ನೋಟೀಸು ಕೊಡುವದೇನರದರ ಬಜಾವಣೆಯ ಸಲುವಾಗಿ ನೀವು ಪತ್ರೆಯನ್ನು ನಿರ್ದಿಷ್ಟ ಮಾಡಿದ ತಾರೀಖಿನೊಳಗಾಗಿ ತುಂಬಿಕೊಡಲಿಕ್ಕೆ ಇಪ್ಪದರಿಂದ, ಪ್ರತಿವಾದಿಯೆಂಬ ನಿಮ್ಮ ಪಕ್ಷವನ್ನು ತೆಗೆದು ಹಾಕಲಾದೀತು.

ಈ ಹೊತ್ತು ಸನ್ ೧೯ 78 ನೇ ಮಾರ್ಚ ತಿಂಗಳ 28 ನೇ ತಾರೀಖಿನಲ್ಲಿ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ಬಾಂತರ— PP 120

ಬೇಲೀಫನ ಹತ್ತರ— 28.3.

ತಾರೀಖು—

ಸೂಚನೆ— ೧. ನಿನ್ನ ಸಾಕ್ಷಿದಾರರು ತಾವಾಗಿ ಹಾಜರಾಗಲಿಕ್ಕಿಲ್ಲವೆಂದು ನಿನಗೆ ಸಂಶಯವಿದ್ದರೆ ವೆಚ್ಚಕ್ಕೆ ಅವಶ್ಯವಾದ ಹಣವನ್ನು ನೀನು ಭರಣಾಮಾಡಿ ಕೋರ್ಟಿಗೆ ಅರ್ಜಿಯನ್ನು ಮಾಡಲಾಗಿ, ಈ ಕೋರ್ಟಿನಿಂದ ನಿನಗೆ ಸಾಕ್ಷಿಯ ಸಮನು ದೊರೆಯುವದು; ಅದ್ದರಿಂದ ಯಾವನಾದರೂ ಸಾಕ್ಷಿದಾರನು ಬಲಾತ್ಕಾರದಿಂದ ಹಾಜರು ಮಾಡಲ್ಪಡುವನು. ಮತ್ತು ಆ ಸಾಕ್ಷಿದಾರನ ಕೈಯಿಂದ ಹಾಜರು ಮಾಡಿಸಲಿಕ್ಕೆ ನಿನಗೆ ಹಕ್ಕು ಇರುವಂಥ ಯಾವದೊಂದು ದಸ್ತಾವೇಜು ಅವನ ಕೈಯಿಂದ ಹಾಜರು ಮಾಡಿಸಲ್ಪಡುವದು.

೨. ವಾದಿಯು ಬೇಡುವದನ್ನು ನೀನು ಒಪ್ಪಿಕೊಳ್ಳುತ್ತಿದ್ದರೆ, ಈ ದಾವೆಯ ವೆಚ್ಚ ಸಹಿತ ಆ ಹಣವನ್ನು ನೀನು ಕೋರ್ಟಿನಲ್ಲಿ ವಸೂಲ ಕೊಡಬೇಕು; ಅದರಿಂದ ನಿನ್ನ ಸ್ವಂತಕ್ಕಾಗಲೀ ಸೊತ್ತಿಗಾಗಲೀ ವಿರುದ್ಧವಾಗಿ ಅಕ್ಷವ್ಯಾ ಮಾಡಬೇಡ

Reliver
27/11
Sdl
Dept

ಸಮಸ್ತ ಪ್ರತಿಜ್ಞೆಯವೋಲೆ.

ಕಾರ್ಯಂ—

ನಾಳುರ.

Civil Appeal No. 338 of 1951.

39

Presented on
13-10-1951.
Sd/- B. A. Joshi.

In the Court of the District Judge, Dharwar.
At Dharwar.

Appellant :- Govind Gopal Pai, Tea Shop Keeper, aged 52 of Hubli.

Versus.

Respondent:- 1. The State of Bombay.
2. Shrinivasrao Narayanrao Chirgubbi.
3. Pralhadrao Narayanrao Chitgubbi.
4. Vasantrao Narayanrao Chirgubbi.

Claim Rs. 65/-

The appellant above named, having been aggrieved by the judgement and decree passed by the Civil Judge, Senior Division, Hubli, on 23-8-1951, in L.C. Suit No. 78 of 1950, begs to appeal against the same on the following among other grounds, viz., :-

1. The judgment and decree of the lower Court are contrary to law, equity and evidence.

2. The lower Court erred in holding that the notice given under section 80 of Civil Procedure Code is not legal and valid.

3. The grounds for holding that the notice illegal and invalid are wrong and untenable.

4. The plaint and the notice have not been properly construed and understood. The lower Cou t erred in hold ng that there was any difference between them.

T 5. The lower Court having observed that the details given in the plaint are a bit different from those stated in the notice, it should have been held that this difference, if any, was absolutely trivial and was not sufficient to invalidate the notice,

6. Plaintiff having admittedly been a tent of defendants 2 to 4, the lower Court ought to have held that the cause of action accruing to defendants 2 to 4 against defendant 1 as mentioned by plaintiff in the notice as cause of action accruing to plaintiff as well.

7. The lower Court erred in construing the notice as disclosing no cause of action to the plaintiff.

8. The lower Court was wrong in holding that the non-agricultural permission granted to defendants 2 to 4 was only for five years and was not for an unlimited period.

9. The order of the Collector granting the non-agricultural permission to defendants 2 to 4 dated 2-8-1941 having contained no words therein showing the period of non-agricultural use to be in any way restricted in point of time, the lower Court should have held the said order to be conclusive between and binding on the parties.

10. The lower Court should have held the Sanad to be inadmissible in evidence.

11. The Sanad granted to defendants 2 to 4 having expressly reserved the right to alter the non-agricultural assessment at the end of five years, the lower Court erred in holding that the non-agri-

41

agricultural permission had been given for a limited period of 5 years only.

12. The Sanad, if admissible, should have been construed in the light of the original order of 2-8-1941. The lower Court was wrong in wholly ignoring the order.

13. The law on the point has not been properly understood by the lower Court.

14. The lower Court wrred in construing the order by reference to ats and conduct of the parties prior and subsequent thereto.

15. The lower Court erred in holding that plaintiffs had no right in the suit property independently of defendants 2 to 4.

16. It should have held that the plaintiffs right of lease hold for a period upto the end of 1957 under the rent note of 19-10-1945 could not be legally affected in any way whatefer by what would be done between defendant No.1 and defendants 2 to 4 after the said date.

17. The lower Court should have held that the building on th suit site did not contravene any of the terms of the order of 2-8-1941 and the sanad, and that it eas in accordance with them.

18. It erred in holding that the Collector's order for eviction was not illegal and could bind the plaintiff.

19. It should have held that the plaintiff could legally challange the said order of eviction and demolition of his building thereon.

20. The lower Court should have granted ~~and~~ the declaration and injunction prayed for.

21. It was wrong in dismissing the suit.

22. Proper inference are not drawn.

23. Proper issues are not framed.

On the aforesaid grounds amongst others, the appellant respectfully prays that the lower Court's decree be set aside , this be allowed and the suit be decreed with costs through out.

Dharwar.
13-10-1951.

Drafted and Presented
by
Sd/- x x x
Advocate,
13-10-19 1.

Admit - Notice
10-10-1951.
D.K.Patil,
A.J.

43-7

Suits:
Dharwar.
For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August 1941 is of permanent duration and for injunction restraining Government from demolishing the structure raised thereon and restraining Defendants Nos. 2 to 4 from interferring with the enjoyment and possession of the suit property by the Plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 20722
Bombay Castle, 29th December 1951.

Read Government Resolution, Legal Department, No. 16679, dated the 20th October 1951.

Endorsement from the District Government Pleader, Dharwar No. 1143, dated the 4th December 1951 requesting Government's sanction to the defence of the Civil Appeal No. 338 of 1951 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge (Senior Division), Hubli.
Civil Suit No. 72 of 1950.
Govind Gopal Pai .....Plaintiff.
Vs.
The State of Bombay and others.Defendants.

Endorsement from the Collector of Dharwar No. L.A.W. 506, dated 10th December 1951 forwarding the above.

Resolution:- Sanction is accorded to the defence of Civil Appeal No. 338 of 1951 in the Court of the District Judge, Dharwar on the lines of the brief accompanying Government Resolution, Legal Department No. 807, dated 12th January 1951 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division), Hubli dated 23rd August 1951.

By order of the Governor of Bombay,

Original

R.T. Katarki.
Deputy Secretary to Government.

Sent to Secy
28/12 D S (Civil)

To

The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar.

S. 27/12. 29/12

69/ Subito after icone
file in S.D.W.S 3/51

No. 847 dated 11 Nov '52,
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembracner of Legal Affairs,

Bombay

Subject :- Civil Appeal No.338 of 1951 in L.C.Suit No.~~168~~ 72 of 1950 - Hubli (Dharwar)
G.G.Pai & others Vs. The State of Bombay
G.R.L.D.20722 of 29-12-1951

Sir,

In continuation of this office No.873 dated 8th Oct '52, I have the honour to submit a detailed report as follows :-

The appellant one Govind Gopal Pai instituted the above appeal against the State of Bombay as the first reppondent and his landlords the Chitgubbies of Hubli as repondents Nos.2 to 4 from the judgment and decree of the Hubli Senior Division Court in L.C.Suit No.~~162~~ 72 of 1950 , dismissing the plaintiff-appellant's suit for a permanent injunction restraining the Government and the defendants nos.2 to 4 the Chitgubbies from demolishing a tea shop built by the appellant on Hubli C.T.S.No.495/1 and taking possession of the same after demolishing the structure.

The appeal was allowed with costs.

The facts of the case are that Hubli C.T.S.No.~~42/1~~ 495/1 forming part of R.S.No.104/A/2 belonged and still belongs to original defendants 2 to 4 and respondents 2 to 4 in the appeal also. On 20-5-1941, the plaintiff obtained a lease of the suit property from defendants 2 to 4 for a period of five years ending on 20-5-1946. After that, he constructed a temporary shed on the property for the purpose of running a tea shop on it. Then on 4-6-1941 the defendants 2 to 4 who are the landlords of the site in question applied to the Collector of Dharwar for permission to convert the suit land into a non-agricultural holding as they had given the same to the plaintiff on a lease of five years for running a tea shop. The Collector afte-

holding an enquiry into the subject matter of the application made an order on 2-8-1949 granting the requisite permission to the applicants. As the purport and effect of the order have been the principal subject of dispute between the parties and as the judge has based his decision on his interpretation of the order it is better to give here the order of the Collector in full :-

" Order - Permission is hereby granted to Messrs. (1) Shrinivas, (2) Pralhad, (3) Vasant father Narayanrao Chitgubbi, of Hubli to use his S.No. 104A/2 measuring 8G-3 yards of Keshavapur, Taluka Hubli, for XXXX N.A.purposes, subject to the following building conditions -

1. Not more than 1/4th of the total area of the plot should be built over.
2. Within and along the perimter of the plot a margin of 30 feet to the North towards road and 10 feet on the sides should be kept permanently open to the sky and nothing whatsoever erected thereon.
3. The building in the plot to be used for tea-shop only.
4. Upper story and privy not to be allowed.
5. 10 feet distance to be kept open betwe n two buildings.
6. The building to be erected within three years from the date of grant.

N.A.assessment at the rate of Rs.3-2-0 per hundred sq.yards is levied on the plot in question.

The Unauthorised erection of the shed is condoned."

After this permission ~~xxxxxxxxxx~~ was granted and the plaintiff-appellant was carrying on his tea shop the Chitgubbi land-lords leased the said property to the plaintiff-appellant for a further period of 11 years which was to begin from the time of th expiry of the first lease by a lease-deed dated 19-10-1945. After the execution of the above lease for the

extended period the Chitgubbi land-lords made an application to the Collector for making the permission for N.A. use a permanent one.on 26-11-1946 (vide Exh. 42); as that application was rejected by the Collector the Chitgubbi land-lords made another application on 10-7-1946 to the Collector by Exh.43 to further extend the period for N.A.use for atleast a period of five years more. In that application the Chitgubbi land lords clearly stated that the permission for N.A.use originally granted to them was operative for a period of five years only. This later application also was rejected by the Collector. Then the Chitgubbi land-lords informed the present plaintiff-appellant that they were not successful in obtaining from the Collector a further extension of time for N.A.use and that therefore the plaintiff-appellant would have to pull down his building.

The plaintiff-appellant then brought the present suit after giving notice to Government for the purpose od restraining the Government from taking possession of the property after pulling down the tea shop, mainly on the ground that the permission granted by the Collector on 2-8-1946 was permanent in its nature and that as long as the plaintiff abided by the conditions of the order and the Sanad the Government had no right to demolish the tea shop and take possession of the land.

The defendant 1 the Government resited the suit on various grounds and issues were framed at Exh.24. Issues relating to the validity of the notice and the question as to whether the permission granted was for a limited or unlimited period were answered in favour of the Government and the suit was dismissed with costs. In the appeal two points were argued mainly on behalf of the plaintiff-appellant and replied to on behalf of the defendant No.1, Defendants Nos.2

to 4
remaining absent.

The contention of the defendant 1 regarding the validity of the notice under section 80 C.P.C. mainly rested on the ground that in the notice given to Government the plaintiff had not mentioned the names of the other defendants and the facts constituting the cause of action against them. As can be seen from the provisions of section 80 C.P.C. what the plaintiff has got to do according to its provisions is the serving of a notice on Government stating the cause of action, the name, description and the placeof residence of the plaintiff and the relief which he claims. It is also further provided that the plaint shall contain a statement that such notice has been so delivered or left. The accrual of the cause of action in favour of the plaintiff against any defendants other than the Government is not contemplated by the wording of the section itself. Hence it appears that the suit cannot be resisted on this ground and the notice substantially complies with the requirements of section 80 ofthe Civil Procedure Code.

But the main ground however on which the suit was mainly fought on behalf of the Government in the trial Court and in the appeal has a more solid basis, namely, the nature of the permission for non-agricultural use granted to the Chitgubbies by the Collector on 2-8-1946.

The main argument of the appellant has been that the order ~~xxx~~ of 2-8-1946 which is produced at Exh.6 in the suit is a complete and formal order by itself and that as long as the owners of the land or the lessee for that matter abides by the conditions of the order, it does not lie within the power of the Government to take possession of the land or ~~xxx~~ demolish the tea shop erected on it. It may be mentioned here that the plaintiff in his deposition (at Exh.33 - page 19 of the typebook) has admitted that he has erected a permanent building on the property leased. A sanad purporting to be in pursuence of the order was granted subsequently by Government and it is produced at Exh.37 in the suit. (page 25 file VII). It was further argued on behalf of the appellant that the Sanad was only in the nature of a certificate and that

the only conditions upon which the N.A. permission was granted were those embodied in Exh.5 and that as the appellant had clearly satisfied those conditions he could not be evicted from the land and the building pulled down. In regard to Exhs.41 and more especially 42 and 43 where it was clearly admitted by the Chitgubbi land lords that the N.A. permission granted by the Collector was for a period of five years only, it was argued on behalf of the appellant that these application s could not be looked to as they represented either the previous or subsequent conduct of his landlords and that they were shut out by the provisions of law. For this preposition the appellant relied the Privy Council rulings in 19 B.L.R. page 493 Maharaj Manendrachandra v. Raja Shri Durgaprasad, (2) Bammanji v. The Secretary of State 31 B.L.R. 256, and (3) Rustumji v Dhairyavan 32 B.L.R. 798. The learned appellate Judge accepting this preposition and relying on these rulings has come to the conclusion that the order converting the land into N.A. land is contained in Exh.5 and that on its true interpretation it gave a permanent ~~MA~~x non-agricultural permission to the land-lords and that therefore it was not open to defendant 1 Government to interfere with a use of that land. Regarding the rulings relied upon by the appellate Judge it is pertinent to observe that the document which the Judges had to interprete were either formal contracts between the parties as in the 19 B.L.R. and the 32 B.L.R. cases. and it was certainly not permissible to the parties to trawell beyond the ambit of the provisions of those contracts and to import into the contracts terms not contained in them by reference either to previous or subsequent conduct. In the 31 B.L.R. case there was an elaborately worded grant made on behalf of the East India Company the predecessor of the present Government and it so clearly conveyed the title to certain villages in favour of the grantee that it was considered futile to cut down the implications of the grant by referri

to the previous correspondence. In my opinion, these rulings have no application to the present case. In the present case, there is no such single document as was the subject of judicial construction in the cases referred to The order Exh.5 does not stand ~~xxxxxx~~ by itself. Clearly it has got to be interpreted in the light of the original application Exh.41 and the subsequent application Exhs.42, and 43 as also in terms of the Sanad issued to the parties as per Exh.37. In a sense, all these together form the contract between the parties and it would be unjudicious and illogical to divorce the one from the other and interprete Exh.5 only in isolation, ~~xxx~~ As has been already mentioned above Exhs. 42 and 43 clearly mention that the permission Exh.5 was granted only for a period of 5 years. It was wrong for the appellate Judge to shut these out.

The Sanad also Exh.37 reenforces the above argument. According to section 48 of the Land Revenue Code land used for agricultural purposes can be turned into N.A. purposes for a temporary or permanent period. Sub-section (b) of section 48 speaks of land being converted into N.A. land for the purpose of building. Then sub-section (c) of the said section speaks of use for N.A.purpose other than agriculture or building. Sub-section (c) essentially refers to a temporary use of the land in question for non-agricultural purpose and it expressly distinguishes the same from the use granted under section (b) for the purpose of the building. Form No.N-1 prescribed under rule 87 (b) according to which the Sanad Exh.37 is issued has been prescribed for a case where N.A. permission has been asked for and given only for a temporary purpose. This is quite clear from the heading of the Sanad Exh.37. It clearly says that the Sanad is given for a N.a.purpose other than a building And the appellant in this case cannot be said to have acted bonafide when he erected upon the land a permanent structure as has been admitted by himself in his deposition exh.33-page 19 of the appeal book.

As one of the reasons for his finding the learned Judge has referred to the condition that a certain space on the land is to be kept permanently open to the sky. This only means that even to

during the ~~xxx~~ temporary period for which the permission was granted no structure was to be put upon the space which was to be kept permanently open to the sky. The learned appellate Judge has also referred to many inaccuracies or variations between the order Exh.5 and the Sanad Exh.37. However, regrettable these omissions or ~~xxxxxx~~ variations may be they ~~xxxxxxx~~ cannot shake the main fact that permission was intended to be granted and granted for a period of five years only. The parties concerned have never understood it as otherwise than temporary.

For these reasons it is submitted that the matter deserves to be taken up in appeal to the High Court for an authoritative pronouncement on the question of law involved. I consider it a fit case for appeal.

Certified and uncertified copies of the judgment and decree of the appellate Court ~~xxx~~ are sent herewith. Appeal book in C.A.338/51 is also sent. Certified copies of judgment and decree of the trial are called for from the Collector and they will be forwarded as soon as they are received.

Yours faithfully,

B. a. Mahishi for

Dist. Govt. Pleader.

L.D.

submitted. The Asst. Judge, Dharwar has decided Civil Appeal No. 338 of 1951 filed by the pltff against Govt. on 18-9-1952. The D.G.P. Dharwar is of opinion that a second appeal should be filed against the decision of the Asst. Judge.

The last Date for filing second appeal is 18-12-52. + 10 days.

for orders.

NB
15/11/52.

Sd(M).

53-1

Received on 24-2-1950.

Registered on 24-2-1950.

Decided on 23-8-52.

Duration : 1 year, 5 months and 29 days.

In the Court of the Civil Judge, Senior Division,

at Hubli. Ex. 47.

Pleaders : -

L. C. Civil Suit No. 72 of 1950.

Sri.Nagarkatil. Govind Gopal Pai, age 52, Brahmin, tea-shop keeper, Hubli.
" Bhate.

.....Plaintiff.

Against.

"B.R.Mathad. 1. The State of Bombay, Bombay. (The Government of the State of Bombay).

"V.R.Deshpa-nde. 2. Shriniwasrao Narayanrao Chitguppi, age 39, Brahmin, landlord, Hubli.

- Do. 3. Pralhadrao Narayanrao Chitguppi, age 35 , Brahmin, landlord, Hubli.

Do. 4. Vasantrao Narayanrao Chitguppi, age 23, Brahmin, landlord, Hubli.....Defendants.

Claim Rs.65/-.

The plaintiff sues to declare that the grant of permission to use the suit property for non-agricultural purpose given on 1-8-1941 by the Collector is of permanent duration and to get an injunction against deft No. 1 restraining him from demolishing the building and against defts 2 to 4 from interfering in any way with the enjoyment and possession of the suit property by the plaintiff during the subsistence of the lease and to get costs.

He states that the suit property is in possession of plff as lessee from defts 2 to 4 since 1941 by virtue of lease

granted to him by defts 2 to 4 under registered deed and the plff has got a right to hold and possess the property described in - plaint upto 20-5-1957 with benefit of renewal of the lease at the option of plff and plff's name is shown in City Survey Records as a lessee from defendants 2 to 4. He states that the suit property was leased by defts 2 to 4 to plff in 1941 for the purpose of - erecting a tea shop thereon and he has erected a building at a cost of Rs. 5000/- and he is running a tea shop in it and for this purpose defts 2 to 4 applied to the Collector Dharwar for converting the suit property into non-agricultural holding for the purpose of erecting a building thereon and the Collector on the application of defts 2 to 4 passed an order on 1-8-1941 granting permission to use the suit property for non-agricultural purposes on certain conditions without any restriction about time and it was granted permanently and a Sanad has been issued in respect of this site to defts 2 to 4 and the restriction is with regard to the use of the building which was to be used for a tea shop only. He states that in the Sanad there is a clause to the effect that non-agricultural assessment has been fixed thereon for a period of 5 years from - 1-8-1941 in the first instance and that it could be revised later according to the rules provided in that behalf and this would indicate that the rate of assessment is subject to revision after the period of 5 years and not that the permission to use it for non-agricultural purpose was limited to a period of 5 years. He says that defts 2 to 4 under mistaken impression applied to the Collector for renewing the permission in 1946 instead of for revising the assessment if thought fit by the Collector and the Collector declined to extend the period taking an erroneous view of the terms of the Sanad and thereafter an appeal was preferred to the Commissioner, S. D. who confirmed the order of the Collector on 19-11-1948 and thereafter a revision petition was preferred to the Government who declined to interfere on 21-9-1949 and plff was not a party to these proceedings and he has no notice of the orders and therefore he submits that the Revenue authorities proceeded upon a wrong assumption that the permission was of a temporary nature. He says that the owners are now called upon to

55

remove the structure standing on the site in question and a notice is given that if it is not so removed it would be got removed at their costs and defts 2 to 4 have informed the plff that the building should be removed and they have no right to call upon the plff during the subsistance of the lease to remove the building or to inferfere with the peadeful enjoyment of the property by the plff. He states that the orders of the Revenue Authorities in question are illegal and they cannot go behind the terms of the order of the Collector passed on 1-8-1941 and the order of the Sanad are conclusive with respect to the permanent lease of the suit property for non-agricultural purposes subject to the conditions mentioned there and the orders are therefore ultra virew and inoperative and they have no binding effect and therefore the Revenue Authorities cannot call upon defts 2 to 4 or plff to demolish the building now standing on the site and defts 2 to 4 cannot interfere with the plff's enjoyment of the property and they cannot ask plff to remove the building during the subsistance of the lease and the building is a substantial one put up at a cost of Rs. 5000/- and it is of a permanent nature and the plff would be put to great and irreparable loss if the above illegal order was to be executed and his business would be totally closed and the plff is entitled according to law remain in possession as a tenant without any interference from the defts and the orders of the Revenue authorities referred to above if executed affect plff prejudicially in the enjoyment of the property and therefore he has filed this suit. He says that a notice as required by Section 80 of the Civil Procedure Code is given to defendant No. 1.

Deft No. 1 states at Ex. 33 that the claim of the plff is false, vexatious and collusive and the notice given to deft No. 1 is not legal and valid, and that the plff's tenancy is not admitted and he is put to the strict proof of his rights if any, in the suit site. He states that the allegations made in the plaint that the non-agricultural permission granted to defts 2 to 4 was for an unlimited period are denied and the Sanad given was for the erection of a temporary structure. He states that though the

period has not been specifically mentioned it is obvious that it was for a period of 5 years and non-agricultural assessment was fixed for a period of 5 years as a non-agricultural permission was intended to be limited for a period of five years only. He states that some months before the expiry of the period of five years defts 2 to 4 applied for permission for a permanent non-agricultural use of the land and this was refused and then they applied on 10/7/46 to the Collector for an extension of the non-agricultural use by five years and therein they admitted that the previous permission was for a period of 5-years only and they admitted before the Mamlatdar that the previous permission was for the period of five years only and these applications and admissions of defts 2 to 4 would clarify the ambiguity if any, in the Sanad about the period and obviously the period was five years only. He states that the plff would be bound by the admissions and the statements made by defts 2 to 4 and he would be estopped from contending to the contrary and the plff has no right at all - independent of defts 2 to 4 and under the provisions of the Land Revenue Code the occupant alone is entitled to the permission for a non-agricultural purpose and the tenant has no legal existence independent of the occupant so far as the permission for the non-agricultural use of the land is concerned and if defts 2 to 4 cannot assert that the period of permission was for more than 5 years much less could the plff do so and defts 2 to 4 have - colluded and the suit is filed and the suit therefore is mala fide and it is not tenable. He states that the permission granted in 1941 was for a period of 5 years so as to coincide with the expiry of the tenancy of the plaintiff and as the tenancy expired the plff can no longer claim any right to be on the land and to use it for non-agricultural purpose. He states that the plff had no right to effect a permanent structure on the land and such structure is opposed to the terms of the Sanad and therefore the order of - eviction was clearly lawful and the period of five years having already expired the permission granted under the Sanad ceased to be operative and the plff could be evicted and the structure could also be removed and plff having no right to put up a costly structure

would not be entitled to claim any damages by reason of such eviction and therefore the plff is bound by the order of eviction issued by the Collector. He says that as the structure raised is within the prohibited distance of 100 feet from the centre of the Hubli Sholapur Road, the Collector was also justified in passing an order for the removal of the structure and the plff has no right to ask for an injunction and the interim injunction given should be vacated. He says that the plff has no cause of action against the deft ~~xxx~~ No. 1 and therefore the suit should be dismissed with costs.

Defts 2 to 4 state at Ex. 20 that they are the owners of the suit property and they have leased out the open site to the plff for a period of 10 years and he has constructed a building for housing a tea shop and they do not know of any correspondence between the plff and deft No. 1. They state that according to Government Notification dated 22/3/1950 it is required of the owners of open sites on either sides of National High Ways and Provincial High Ways to keep open 60 feet from the centre of the road while erecting their buildings. They state that the Plff has constructed his building beyond 60 ft. from the centre of the road and he has not committed breach of any Rule or Notification. They say that they are not necessary parties to the suit and the suit against them be dismissed with costs.

On these contentions the following issues are raised at Ex. 24 :-

1. Whether the notice given under section 80 C. P. C. is legal and valid ?
2. Whether plff proves his tenancy of the suit property?
3. Is it proved that the non-agricultural permission granted to defts 2 to 4 was for an unlimited period and not for 5 years ?
4. Is the plff estopped from raising contentions contrary to the statements and admissions made before the Revenue Authorities ?
5. Whether plff has any right of non-agricultural use independent of the occupants ~~x~~ ~~xx~~ landlords ?

6. Whether plff proves that he has a right to erect permanent structures as against the terms of the Sanad ?

7. Whether plff can claim damages ?

8. Does plff prove that the order of the Collector for eviction is illegal and not binding on him ? Can he challenge the same ?

9. Is plff entitled to the declaration and injunction sought ?

10. What order ?

Answers :-

1:- No. 2:- Yes. 3:- No. 4:- Not sustained.

5:- No. 6:- No. 7:- No. 8:- No; No.

9:- No. 10:- As given below.

Reasons.

The statements of Govind Pai Ex. 33 and Shrinivas Ex. 34 are recorded for plff and the parties have not adduced any other oral evidence in the case.

The admitted facts of the case are that the defts 2 to 4 are the owners of the suit property and that on 4-6-41 they applied to the Collector Ex. 41 stating that they have leased the suit property to one Govind Gopal Nai for a period of 5 years and therefore orders should be issued for using the property for non-agricultural purposes. Defts 2 to 4 leased the property to plff on 20/5/1941 for a period of 5 years agreeing to get a rent of Rs. 140/- and thereafter the plff executed a second rent note dated 12/10/1945 agreeing to pay Rs. 250/- as rent per year for a period of 11 years. The Collector issued a Sanad Ex. 37 to defts 2 to 4 dated 1/8/1941 in which it was stated that the suit land was used for a non-agricultural purpose i. e. for the purpose of a tea-shop and not for a permanent building and that the assessment has been fixed for a term of 5 years from 1/8/41 at Rs. 29/12/0 per year. It is further stated there that on the expiry of the term the assessment would be liable to be revised in accordance with

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with the Land Revenue Code and the rules and orders made thereunder. The Sanad is written on Form No. 1 and it is stated at the top " Form of Sanad in cases where the assessment on land temporarily appropriated to non-agricultural purposes other than buildings is altered under Section 48 " . The order passed by the Collector is at Ex. 6 and is dated 2nd August 1942 . It is stated there " Permission is hereby granted to M/s. 1. Shrinivas, 2. Pralhad, 3. Vacant father Narayanrao Chitgoppi of Hubli to use the S. No.....for N. A. purposes subject to the following building conditions....3. The building in the plot to be used for tea shop only.." . Thereafter the Sanad Ex. 37 was given. The plff had already constructed, it appears, a building in the suit property and it was condoned. On 20-1-46 deft No. 2 made an application Ex. 42 to the Collector to allow him to use the property permanently for non-agricultural purpose. On 10/7/46 defts 2 to 4 gave an application Ex. 43 to the Collector to grant a temporary permission for a further period of 5 years regarding the suit plot. The Collector passed an order, a copy of which, is at Ex. 36 . It is stated there " With reference to your and your co-occupants joint application dated 20th July 1946 for the grant of N. A. permission to use City S. No. 495 for non-agricultural purposes temporarily for a further period of 5 years I am to inform you that your request is refused as the permission applied for cannot be granted under the standing orders of Govt. regarding the prevention of ribbion development". This was addressed to deft No. 2. Thereafter defts 2 to 4 filed an appeal to the Commissioner S. D. who dismissed the appeal . Defts 2 to 4 thereafter filed an appeal to the Government and it was also dismissed. Thereafter the plff gave a notice Ex. 35 to the defts and he has filed this suit .

Issue No. 1 :- The notice given by plff is at Ex. 35. It was given to deft No. 1. It is stated for deft No.1 that it is not legal and valid. It is stated that in para 7 the words are " The cause of action arose on and from 15-10-1949 when Municipal Hubli issued a notice to defts 2 to 4 calling

upon them to pull down the building ". It is stated that defts 2 to 4 may have got a cause of action but the plff has not disclosed any cause of action for him to file the suit. In para 6 the plff has stated " The orders of the Revenue Authorities referred to above if, executed affect plff prejudicially in the enjoyment of the property ". Section 80 of the Civil Procedure Code states that no suit shall be instituted against Government without stating the cause of action, the name description and place of residence of the plff and the relief which he claims. The details given in the plaint are a bit different from those stated in the notice . In para 8 of the plaint it is stated that cause of action arose on and from 15-10-1949 when deft No. 1 called on defts 2 to 4 a nd this plff to remove the building and defts 2 to 4 called on plff to remove the building. When para 7 of the notice and para 8 of the plaint are compared it is seen that the plff disclosed no cause of action as against him in the notice and he has disclosed a cause of action as against him in the plaint. Therefore under section 80 it is seen that the notice as given is not proper and legal. I, therefore, find issue No. 1 in the negative .

Issue No. 2 :- The plff and deft No. 2 have stated that the defts 2 to 4 leased the suit property to plff for a period of 5 years at first and then for a period of 11 years Ex. 40. I therefore find the issue in the affirmative .

Issue No. 3 :- It is stated for the plaintiff that the Sanad is for a longer period than 5 years and that it cannot be restricted to 5 years and that therefore it was not necessary for defts 2 to 4 to make an application for getting permission to use the pfoperty for non-agricultural purposes. It is stated for plff that it is mentioned in the Sanad that the non-agricultural assessment may be varied at the end of 5 years and that this did not mean that permission to use the property was given for a period of 5 years only . It is true that time is not mentioned in the Sanad Ex. 37. But it is clear from the Sanad that it is for a temporary period and that it was not for an unlimited period. It is stated for plff that the remarks in the

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case The Secretary of State for India Vs. Abdul Hussen (29 Bom. L. R.) 1350 at 1352 are relevant. It is stated there " Though we are not dealing with a penal statute in the strict sense of the word nevertheless this is in the nature of a penal statute and therefore must be strictly considered in favour of the subject ". Reliance is also placed on the ruling, The Secretary of State for India Vs. Faredool, 36, Bom. L. R. 761 at page 775 it is stated " A grant is to be construed by its own terms and not by the previous or the subsequent conduct of the parties " . Reading the terms of the Sanad as a whole it cannot be said that the Sanad is for a permanent duration. The defts 2 to 4 had leased the property to plff for a period of 5 years and therefore they applied to get permission for on-agricultural use. At the end of 5 years defts 2 to 4 applied again for permission and the proceedings show that defts 2 to 4 wanted in 1941 permission for 5 years only. I, therefore, find that the non-agricultural permission granted to defts 2 to 4 was not for an unlimited period but was for a period of 5 years .

Issue No. 4 :- It is not shown for deft No. 1 as to how the plff is estopped as alleged. There can be no estoppel where a party is not misled and has not been induced to do something detrimental to his interest owing to the action of the other ~~pxxy~~ party . I, therefore, find the issue in the negative.

Issue No. 5 :- The plaintiff claims through defts 2 to 4 and he has got no rights in the property independent of defts 2 to 4. Therefore I find the issue in the negative .

Issue No. 6 :- In the plaint the plff has stated that the building in the suit property is a substantial one put up at a cost of Rs. 5000/- and that it is of a permanent nature and that the plff will be put to great and irreparable loss if the above illegal orders were to be executed and his business would be totally closed. In the Sanad Ex. 37 it is stated that there was to be tea shop but it was not to be a permanent building. Therefore it is seen that the plff has no right to construct a permanent building against the terms of the Sanad. It is not shown for plff as to how he has got a right to erect a permanent building as against

the terms of the Sanad . Therefore I find issue No. 6 in the negative.

Issue No. 7 : - No damages are claimed by plff in this suit and therefore I find the issue in the negative.

Issues 8 and 9 : - The Collector is the person who has got a right to give permission to use an agricultural land for non-agricultural purposes and in the present case he gave permission for a temporary period and defts 2 to 4 applied to get the time extended but their request was not granted by the Collector and thereafter they filed an appeal to the - Commissioner, S. D. and the copy of the order of the Commissioner is produced in the case. It is detailed order and after narrating the facts the Commissioner stated " Hubli is a big and growing city and it is not desirable to relax the condition of a marginal limit as it will create a bad ~~xxxx~~ precedent. The permission was granted for a temporary N. A. purpose i.e. for a tea shop and not for the construction of a pucca building . The contention of the appellant that they would be put to great hardship if the building is pulled down is therefore not tenable. I am, therefore, not prepared by recommend the request of the appellant to Govt." . It is stated for the plff and defts 2 to 4 that the Govt. have amended the rules regarding construction of buildings near - National High Ways and that according to them it is necessary to keep open 60 ft. from the centre of the road while erecting buildings close-by . If it is so, it is for the Collector to consider the point and not for the court and the plff and defts 2 to 4 may approach if they are advised the Collector in the matter. I, therefore, find the issues in the negative.

Order.

The suit is dismissed. The plff shall pay the costs of deft No. 1 and he ~~x~~ and defts 2 to 4 shall bear their costs.

23-8-1951. Sd/- B. A. Chougule.

Civil Judge, S.D.

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Brahmin, landlord, Hubli.

3. Pralhadrao Narayanrao Chitguppi, age 36, Brahmin, landlord, Hubli.

4. Vasantrao Narayanrao Chitguppi, age 23, Brahmin, landlord, Hubli.

Decree.

In the Court of the Civil Judge, Senior Division, At Hubli.

Long Cause suit No. 72 of 1950. Exh. 48.

Plaintiff :- Govind Gopal Pai, age 52, Brahmin, tea shop Keeper, Hubli.

vs.

Defendant :- 1. The State of Bombay. (The Government of the State of Bombay)

2. Chrinivasrao Narayanrao Chitguppi, age 39, Brahmin, landlord, Hubli.

3. Pralhadrao Narayanrao Chitguppi, age 36, Brahmin, landlord, Hubli.

4. Vasantrao Narayanrao Chitguppi, age 23, Brahmin, landlord, Hubli.

Claim Rs 65/-.

Plaint presented on 24-2-1950.

" registere on 24-2-1950.

The above named plff respectfully be[illegible]state as under :-

1) Description of pr[illegible]:- Property situate in Hubli Koshwapur bearing [illegible]No. 495/1 forming part of R.S.No.104/A/1 superficial area 952 sq.yds is the ownership of defts 2 to 4 and stands in their name in C.T.S. records.

2. The property described above is in the possession of plff as lessee from defts 2 to 4, since 1941, by virtue of lease -hold rights granted to him by defts 2 to 4 under registered deed. Plff by virtue of his leasehold rights has a

right to hold and possess the property described above upto 20-5-1957 with benefits of the lease at the option of plff. He is shown in C.T.S. extracts as lessee from defs 2 to 4.

3. The above described property was leased by defts 2 to 4 to plff in 1941 for the purpose of erecting a tea shop thereon. He has erected a building at a cost of Rs 5000/- and in running a tea shop in it. For this purpose defts 1 to 4 applied to the Collector of Dharwar for converting site in question into a non-agricultural holding for the purpose of erecting a building thereon. The Collector on the applications of defts 2 to 4 passed an order on 1-8-1941 granting permission to use the suit property for non-agricultural purposes, on certain conditions without any restriction about time. It was granted permanently- A sand has been issued in respect of this site to defts 2 to 4. The restriction is with regard to the use of the building that it should be used for a tea shop only.

4. In the Sanad there is a clause to the effect no agricultural assessment has been fixed thereon for a period of 5 years from the 1st of August 1941 in the first instance and that it could be revived later according to the rules in that behalf. It would indicate that the rate of assessment is subject to revision after the period of 5 years and not that the permission to use it for a non-agricultural purposes was limited to a period of 5 years.

5. But it appears that defts 2 to 4 under a mistaken impression applied to the Collector for renewing the permission in lieu instead for revising the assessment if thought fit by the Collector. Collector declined to extend the period on an erroneous view of the terms of the Sanad. There-on an appeal was preferred to the Commissioner who confirmed the order of the Collector in L.R.A.S.R. 571 on 19-11-1948. A revision petition was preferred to the Government but the Government declined to interfere with this order of the Commissioner on 21-9-1949. Plff was not a party to these proceedings and he has no notice of the orders. It is submitted with respect that the revenue authorities proceeded upon a wrong assumption that the permission was of a

65-115

a temporary nature. They have now called upon the owners to remove the structure, standing on the site in question and a notice is given that if not so removed it would be got removed at their cost. Defts 2 to 4 have also informed the plff that the building should be removed. Defts 2 to 4 have no right to call upon the plff during the subsistance of the lease to remove the building or interfere in plff's peaceful enjoyment of the property.

6- It is submitted that the orders of the revenue authorities in question are illegal and unsustainable in law. It is not competent to them to go behind the terms of the orders of the Collector passed on 1-8-19 , the order and the sanad are conclusive with respect to the permanent use of the suit property, for a nonagricultural purposes subject to the conditions mentioned there. The order of the Collector the commissioner and the Government ending in R.D.No.77688/ 21-9-1949 are therefore ultra vires and inoperative. They have no binding effect. The revenue authorities are therefore not entitled to call upon defts 2 to 4 or plff to de,olish the building now standing on the site. The defts 2 to 4 cannot interfere in plff's quiet enjoyment of the property or ask plff to remove the building during the subsistency of the lease. The building is the substantial one put up at a cost of Rs 5000/-. It is of a permanent nature. Pltf Plff would be put great loss if the above illegal order were to veexecuted a business would be totally closed.

7. The plff maintains that he is entitled in law to remain in possession as a lessee without any interference from defts. The orders of the Revenue authorities referred to above if executed affect plff prejudicially in the enjoyment of the property. Hence this suit is for a declaration that the grant of permission to use the site in question given on 1-8-1941 by the Collector is of a permanent duration and for an injunction restraining deft No. 1 from getting the building demolished or pulled, also restraining defts 2 to 4 from interfering in plff's peaceful

and quiet enjoyment of the suit property as per terms of the lease and during the subsistancy of the lease.

8. The cause of action arose on and from 15-10-1949 when deft 1 No. 1 called on defts 2 to 4 and this plff to remove the building and defts 2 to 4 called on plff to remove the building.

9. Notice under section 80 of the C.P.C. is given to deft No. 1 and is acknowledged by him.

10. The suit is valued for Court fees at Rs 65/-, the suit being one for declaration and injunction fixed, fixed Court fee is paid. For the purpose of jurisdiction and pleader's fee, it is valued at Rs 65/-.

11. Hence the plff prays and claims

A) for a declaration that the grant of permission to use the suit property for non-agricultural purposes given on 1-9-1941 by the Collector is of permanent duration.

B) ~~12.~~ For an injunction restraining deft No.1 ~~to~~ from getting the building demolished or pulled and defts 2 to 4 from interfering in any way plff's enjoyment and possession of the property during the subsistancy of his lease.

C) and for costs of the suit and such other reliefs as the Court deems fit under the circumstances.

This suit coming on this day 23rd August 1951 for final disposal before Shri S.A.Chougle, Civil Judge, Senior Division in the presence of Shri. K.S.Nagarkatti and Shri. Bhate pleaders ~~s~~ for plff and Shri. B.R.Mathad pleader for deft No. 1 and Shri. V.R. Deshapande for defts 2 to 4, it is hereby ordered and decreed as under :-

The suit is dismissed. The plff shall~~s~~ pay the costs of deft No.1 and he and defts 2 to 4 shall bear their own costs.

6/7/51

Bill of costs.

Costs of plff.		Costs of deft 1.	
Stamps for plaint Ex.1.	Rs 6-4-0	Stamps for applications	Rs 6-4-0
" for Vakalat Ex.2	1-4-0	Pleader's fees on Rs 65/- the minimum.	15-0-0
" for process Exs.3-11.	7-0-0	Total	Rs 21-4-0
" for applications Ex.6,21,24, 25, 26,27, 30.	3-12-0	Applications disallowed.	
Pleader's fees on Rs 65/- the minimum.	15-0-0	Ex.9, 10,12,16, 17,19,22,23,28, 29.	6-4-0
Total	Rs 32-4-0	Balance	15-0-0
Applications disallowed.			
Ex. 6,11,25,26,27,31.	2-12-0		
Balance	29-4-0		

Costs of defts 2 to 4.

Stamps for Vakalat Ex. 14	0-10-0
" for applications Exs. 15, 18, 22	1-14-0
Pleader's fees on Rs 65/- the minimum.	15-0-0
Total	Rs 17-8-0
Applications disallowed.	
Exs. 15,18,18.	1-14-0
Balance	15-10-0.

Given under my hand and seal of this Court on 2nd August 1951.

Sd. P.S.Kulkarni.
Karkun.

(Seal) Sd. D.A.Chaugle.

Civil Judge, Senior Division.

6-8-1951.

Pleader for plff :- Sd. K.G.Pagarkatti.

Pleader.

Dharwar District Court Appeal No.338 of 195

(From the decree in Civil Suit No.72 of 1950).

Solr. (M.L.)

The appellant Govind Gopal Pai had filed a suit against the State of Bombay in the Court of the Civil Judge, S.D. Hubli for a declaration that the permission granted by the Collector on 1-8-1941 for the non-agricultural use of City Survey No.495/1 was of a permanent duration and that the Government of Bombay had no right to evict the plaintiff from that land.

The above land belonged to Shrinivasrao Chitgupi and his brothers. They passed a lease of that land in favour of the plaintiff Govind Gopal Pai for a period of five years on 20-5-1941. The land was agricultural and therefore the lessors applied to the Collector for permission to convert the land to non-agricultural use by allowing the tenant to erect a tea shop in it. The Collector granted the permission on 2-8-1941 subject to certain conditions. In due course a sanad was issued to the owners of the land in form NI under rule 87(b) of the Land Revenue Rules. The plaintiff as a tenant erected a structure in the land and carried on a tea shop at the place. At the end of five years the plaintiff obtained a new lease from the owners for a further period of 11 years. A new lease was accordingly passed in favour of the plaintiff on 19-10-1945. The owners of the land again applied to the Collector in 1946 to extend the n.a. permission for another 11 years. The Collector rejected that application, The owners applied again and requested that the permission for n.a. use may be extended at least for five years. The Collector rejected that

application...

application also and called upon the plaintiff to remove the tea-shop. The plaintiff, as the lessee of the land, then filed the present suit for a declaration that under the order issued by the Collector on 2-8-1941 granting permission for n.a. use, no period had been fixed for such use and therefore the land could be permanently used for n.a. purposes as long as the other conditions of the sanad were duly performed.

The Government opposed the plaintiff's claim alleging that the owners had created a five year's lease in the first instance in 1941 and had then applied for permission for n.a. use of the land. It was implied in the application itself that the permission was to be for five years only. The sanad issued to the owners was in form N-I which is intended to be used only when the permission is granted for a temporary period. It is true that in the Collector's order dated 2-8-1941 it is not stated in so many terms that the permission was to operate for a period of five years only. That condition also was not explicitely mentioned in the sanad. But the sanad contained a term that the n.a. assessment was liable to be revised at the end of the period of five years. It was also pointed out that after the end of the first lease of five years the owners applied to the Collector for extension of permission for n.a. use by another 11 years. That fact shows that the first permission was understood to be in operation for a period of five years only. In another application filed by the owners it had been expressly admitted by them that the permission granted in 1941 was for a period of five years only. The plaintiff's contention that the permission for n.a. use had been granted permanently was not, therefore, correct. Other defences were also raised.

The...

The trial Court accepted the contentions raised on behalf of the Government and dismissed the plaintiff's suit. The plaintiff then filed an appeal in the District Court, Dharwar. The appeal was heard by the Assistant Judge, who allowed it with costs. He held that there was no condition in the Collector's order dated 2-8-1941, or in the sanad issued to the owners of the land, that the permission for n.a. use was to operate only for a period of five years. In the absence of any such restriction the permission must be deemed to have been granted permanently. The learned Judge also held that the previous conduct and the subsequent conduct of the owners of the land cannot be taken into account in construing the terms of the grant. On these findings the learned Judge made a declaration that the permission for n.a. use granted by the Collector in 1941 would operate permanently as long as the plaintiff was ready and willing to perform the other conditions imposed by the Collector. Thus the plaintiff had succeeded in the appeal.

The question is whether the Government should go to the High Court in second appeal. The District Government Pleader has strongly recommended that this is a fit case for going to the High Court in second appeal. He has pointed out that the owners of the land applied for permission for n.a. use after creating a lease for a period of five years in favour of the plaintiff. The owners could not have intended to ask for permission for n.a. use beyond the period of five years. The owners clearly understood their application for permission to mean that they wanted the necessary permission for a period of five years during which the lease was to operate. It is true that the Collector's

order...

order dated 2-8-1941 does not specifically mention that the permission was granted for five years only. But the Collector's order must be read in the light of the application filed by the owners of the land. It was also significant that there was a term in the sanad that the assessment was fixed for a period of five years and that thereafter the assessment was liable to be revised. This indicated that the permission was intended to be operative for a period of five years only. It is true that extraneous evidence cannot be ordinarily admitted to construe the terms of a grant; but that principle operates only when the grant is evidenced by a formal document intended to contain all the terms of the contract. In the present case the Collector's order dated 2-8-1941 should not be regarded as an elaborate document containing the terms of the contract. His order has to be read in the light of the application on which it had been passed. The cases relied upon by the learned Asstt. Judge are all cases in which elaborate documents containing the terms of the contract had been formally drawn up. The present case is not of that kind.

The recommendation made by the District Government Pleader may be, therefore, accepted and a second appeal may be filed in the High Court so that the point of law involved in the case may be authoritatively decided. The Government Pleader, High Court may be, therefore, instructed to file a second appeal in the High Court against the decision of the learned Assistant Judge, Dharwar.

SRK
4-12-52

RMS.
4.12.

R.L.A. 4/12

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
05 DEC 1952

No. 20369/E
dt. 5-12-52

Secy. R.D. 5/12

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Suits:
Dharwar.
For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August 1941 is of permanent duration and for injunction restraining Government from demolishing the structure raised thereon and restraining Defendants Nos.2 to 4 from interfering with the enjoyment and possession of the suit property by the Plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10187/X
Bombay Castle, ~~September 1952~~ 20th April 1954.

Read Government Resolution, Legal Department, No. 807, dated the 12th January 1951.

Letter from the District Government Pleader, Dharwar No. 873 dated the 8th October 1952 stating that the First Appeal No. 338/51 filed in the suit noted in the margin was decided by the Assistant Judge, Dharwar on 18th September 1952 when the following order was passed.

In the Court of the Civil Judge (Senior Division), Hubli.	:	Appeal No. 338/51 filed in the suit noted in the margin was decided by the Assistant Judge, Dharwar on 18th September 1952 when the following order was passed.
Civil Suit No.72 of 1950.	:	
Govind Gopal Pai. ... Plaintiff;	:	
versus	:	
The State of Bombay and others. ... Defendants.	:	

" The decree of the trial Court is set aside and it is declared that the grant of permission to use the suit property for non-agricultural purposes given on 1-8-1941 by the Collector is for an unlimited period. Defendants 2 to 4 shall not interfere with the plaintiff's enjoyment and possession of the property during the subsistence of this lease. The appellant shall get his costs throughout from respondent No.1 who shall bear his own costs. Respondants 2 to 4 to bear their own costs."

RESOLUTION : Sanction is accorded to the institution of Second Appeal in the High Court of Judicature at Bombay against the decision of the Assistant Judge, Dharwar dated the 18th September 1952 on the lines of the brief accompanying Government Resolution, Legal Department, No. 807 dated the 12th January 1951.

By order and in the name of the
Governor of Bombay,

certified R.T. Katarki
R.T. Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector, Dharwar,
The Government Pleader, High Court, Bombay (~~with papers~~)
The District Government Pleader, Hubli.

Submitted for sanction
SOL (MRV) 19/4
17/4
S.S 17/4

cks/17.9.

File with S. DWR 3/51

S.S.

S. Dwr 3/51

22/4/54

Judgment recorded by the High Court in Second Appeal No. 111 of 1953 in the case of The State of Bombay V/S Govind Topal Pai and others.

==

Mr. V.S.Desai Asstt. Govt. Pleader for the Appellant.
Mr. G. P Murdeshwar Advocate for Respondent No.1.

Coram:- Baydekar J)
20/4/1955.

ORAL JUDGMENT :

This is a second appeal arising from a suit which had been filed by respondent No.1 who is the owner of a tea shop upon land belonging to defendants Nos. 2 to 4. Defendants Nos. 2 to 4 let out to the plaintiff the land for the first time on the 20th of May 1941, and inasmuch as the plaintiff wanted to erect a tea shop upon the land, defendants Nos. 2 to 4 made an application to the Collector on the 4th of June 1941 for permission to allow the land to be converted for non-agricultural use, namely, for the purpose of erecting upon it a building for a tea shop. This permission was granted by the Collector on the 2nd of August 1941 . It was to hold good from the 1st of August 1941. In the year 1946 when the plaintiff's lease expired, defendants Nos. 2 to 4 made an application to the Collector to give them permission to convert the land permanently for non-agricultural use. They were apparently under the impression that the original - permission which had been granted was only for five years. The Collector refused to give the permission. Defendants Nos. 2 to 4 then applied to the Collector for permission to use the land for the same purpose, namely, for the tea shop, for a further period of five years. That application was also refused. Further attempts having proved fruitless, the plaintiff filed the suit from which the - present appeal arises contending that the original permission which was granted for converting the land for non-agricultural use was fo

non-agricultural use was for permanent conversion.

The principal defendant was defendant No.1, the State of Bombay, and its contention was that the permission which has been granted to defendants Nos. 2 to 4 in the year 1941 was for converting the land for a non-agricultural purpose only for a period of five years. This contention has failed so far, and defendant No.1 has come in appeal.

The only point which is in favour of the contention of defendant No.1 is that the form which has been used is the form which is used in case of land tempoarily appropriated for non-agricultural purposes other than building. But if we look into the sanad itself, there is no condition restricting the use of the land for a building for a tea shop for five years from the date of the grant. The order which was passed by the - Collector on the 2nd of August 1941 is to the same effect. It says nothing whatever about the permission being restricted for a period of five years from the date of the order. It may be that defendants Nos. 2 to 4 were under the impression that the permission had been granted for a period of five years only; but that obviously appears to have been due to the fact that the sanad mentioned that the assessment was liable to be changed at the end of a term of five years. Now, it is one thing to say that the assessment was liable to be changed after the end of a particular period, and another to say that the permission which had been granted was itself for converting the land for non-agricultural purpose for that much period. There is consequently no substance in the appeal, which is dismissed with costs in favour of respondent No.1..

Received on -
Registered on. - 79
Decided on -
Diration -

Exh. No.14.

In the Court of the Assistant Judge, Dharwar.
At Dharwar.

Civil Appeal No.338 of 1951 from the decree in L.C.Suit No.72 of 1950, of the Court of the Civil Judge, Senior Division, Hubli (Shri. B.A. Chougule).

Pleaders :-
Shri.N.R.Koppikar.

Appellant :- Govind Gopal Pai. - (Or. plaintiff).

Versus.

Asst. Govt. Pleader.
Shri. V.R.Deshpande.

Respondents:- 1. The State of Bombay.
2. Shrinivasrao Narayanrao Chirguppi, of Hubli.

Absent.

3. Pralhadrao Narayanrao Chirguppi, of do.

Absent.

4. Vasantrao Narayanrao Chirguppi, of do. --- (Or. defts).

Claim Rs.

Judgment.

1. This is an appeal by the plaintiff from the judgment and decree of the learned Civil Judge, Senior Division, Hubli, dated 23-8-1951 dismissing L.C.Suit No.72 of 1950.

2. Defendants 2 to 4 are the owners of the property situate in Hubli City Survey No.495/1 forming part of R.S.No.104/A/2. On 20-5-1951, the plaintiff obtain

lease of the property from defendants 2 to 4 for a period of 5 years ending on 20-5-1946. Thereafter, he started constructing a building in it with a view to run a tea shop in it. On 4-6-1941, defendants 2 to 4 applied to the Collector for permission to convert the property into a non-agricultural holding. The Collector passed an order on 2-8-1941 giving the necessary permission subject to certain conditions. In due course a Sanad was issued to them. The period of the lease was further renewed for 14 years from 20-5-1946 by a fresh lease dated 19-10-1945. In 1946, the Collector ordered defendants 2 to 4 to remove the buildings as he found that the steucture raised was within the prohibited distance of 100 feet from the centre of the Hubli Sholapur road. The appeals of defendants 2 to 4 to the Commissioner and to the Government were of no avail, and defendants 2 to 4 informed the plaintiff that the building constructed by him should have to be removed. The plaintiff thereupon has filed the suit alleging that the permission given for non-agricultural purposes was not for a limited period but for an unlimited period, and that as long as the plaintiff and defendants 2 to 4 carried out the conditions of the permit the Collector had no right to pass an order of eviction. As defendants 2 to 4 seem to be anxious to carry out the orders of the Collector, the plaintiff joined them in the suit and asked for an injunction against defendants 2 to 4. Defendants 2 to 4 did not seriously contest the suit, but the suit was contested by defendant No.1, who is the State of Bombay. It was contended, inter alia, by defendant 1 that the permission was for a limited period of 5 years only, and that the notice given by the plaintiff under section 80 of the Civil Procedure Code was not legal and valid. Several other contentions were also raised, but we are not concerned with them. The learned Civil Judge held that the permission granted by the Collector to defendants 2 to 4 was not for an unlimited period, but only for 5 years, and, therefore, the suit had

to be dismissed. He also held that the notice given by the plaintiff to defendant No.1 was not proper and legal as required by section 80, C.P.Code.

3. The only points which were canvassed before me are firstly, whether the permission given by the Collector was for an unlimited period, and secondly, whether the notice was invalid. The issues for decision, therefore, are :-

i) Whether the permission for non-agricultural use is for a limited or unlimited period ?

ii) Whether the notice given by the plaintiff to defendant No.1 under section 80 C.P.C. is valid ?

My findigs are :-

i) The permission is for an unlimited period.

ii) Yes.

Reasons

4. I shall take the second issue first, because the point was not seriously challanged by the Assistant Government Pleader, who appeared for the State of Bombay. The learned Civil Judge was of the view that the details given in the plaint were a bit different from those stated in the notice, and that the plaintiff disclosed no cause of action in the notice. I am unable to accept this view of the notice. It must be borne in mind that the suit is not only against the State of Bombay, but also against defendants 2 to 4 who are plaintiff's lessers. So far as the notice to defendant 1 is concerned, it need not incorporate the cause of action as against defendants 2 to 4. If we read the notice and the plaint bearing this in mind, we will find that the notice and the

cause of action as against defendant 1, as disclosed in the plaint, are practically identically worded. We have only to look at the notice (Exh.35) to see whether the cause of action, as detailed in the plaint, has been disclosed in the notice or not. Exceptx the averments which are necessary for a cause of action against defendants 2 to 4, all the necessary averments in the plaint are found in the notice, and I do not see how it can be said that there was no legal and valid notice. As I have said before, the point is not challanged by the learned pleader for respondent 1 and and I hold that the notice both proper and legal.

5. The important issue is the first issue which involves the consideration of the nature of the permission granted. After the lease was granted to the plaintiff on 20-5-1941 the plaintiff constructeda building for his tea shop in that same year. The plaintiff alleges that he has spent Rs.5000/- for the construction and that fact is not seriously contested. The contention of defendant 1 is that the permission was for a limited period of 5 years, that the plaintiff constructed at his own risk, and he had no right to erecta costly structure and then come forward for an injunction. It was contended that the permission was asked for a limited period and was also given for a limited period for the purpose of the erection of a temporary structure, and if the plaintiff disregarded the conditions he could do it at his own risk. The essential point, therefore, is whether the permission was for a limited period or an unlimited period.

6. Exh.41 is the application made by the defendants 2 to 4 for the necessary permission. It is dated 4-6-1941. The application is a very short one and stands thus when translated :-

" R.S.No.495 in WardNo.1 of Hubli City is an open

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" site and of our ownership. We have leased the same to one Govind Pai of Hubli for 5 years Therefore it is requested that you should pass orders for converting the same to non agricultural use."

On this application the Collector passed an order on 2-8-1941 as per Exh.5. By that order permission was granted to defendants 2 to 4 to use the suit property measuring 8 gunthas 3 yards for nonagricultural purpose subject to 6 building conditions. The first condition required that no more than 1/4th of the plot should be built over. The second condition required that a margin of 13' on the Northern side and a margin of 10' on the other sides should be kept permanently open to the sky. The third condition was that the building in the plot must be used for tea shop only. The 4th condition was that there should be no upper storey or privy for the building. The 5th condition was that ther shouldbe a distance of 10' between two buildings and the last condition was that the building ought to be erected within 3 years from the date of the grant. Non-agricultural use being thus allowed subject to the above conditions, assessment at the rate of Rs.3-2-0 per 100 sq.yards was levied on the land in question. This order which was communicated to defendants 2 to 4 was followed up by what is knwon as a Sanad. Though it is signed by the Collector it does not bear any date. The conditions imposed by the order were stated in the Sanad and the printed form was filled up where necessary. Although this document is called a Sanad, issued under Rule 87(b) of the Land Revenue Code as per Form N 1, it is not an agreement, as such,beteen the parties, but merely a certificate stating that the assessment has been fixed for a term of 5 years from the 1st day of August 1941 and that on the expiry of the said term.

assessment aforesaid would be liable to revision in accordance with the Land Revenue Code, the rules and orders for the time being in force. Section 48(2) of the Land Revenue Code provides that where land assessed for use for any purpose as described in sub-section(1) is used for any other purpose the assessment becomes liable to be altered and fixed at a different rate. Section 65 lays down the procedure for applying to the Collector when an occupant wishes to use his holding for non-agricultural purposes. Section 66 provides for penalty if the previous permission for conversion to non-agricultural use has not been obtained. Section 67 empowers the Collector to grant the permission on such terms and conditions as may be prescribed by the Collector subject to any rules made in this behalf by the Governor-in-Council. It is, therefore, clear that Exh.5 which is the order of the Collector dated 2-8-1941 is issued under section 67. Section 68 describes the nature of the occupant's rights. That section says that an occupant is entitled to the use and occupation of his land for a period, if any, to which his tenure is limited, or if the period is unlimited or a survey settlement has been extended to the land, in perpetuity conditional on the paymrnt of the amounts due on account of the Land Revenue for the same according to the provisions of the Land Revenue Code, or of any rules under it, or of any other law for the time being in force and on the fulfilment of any other terms or conditions lawfully annexed to his tenure. It is the contention of the plaintiff that neither the order (exh.5) nor the Sanad (Exh.38) limits the period of the tenure, and, therefore, the permission to use the property for non-agricultural purposes must be deemed to be for an unlimited period subject to the conditions imposed by the Collector at the time of the grant.

7. It is admitted on behakf of the State that neither

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the order nor the Sanad prescribes expressly the period for which the permission had been granted. But it is contended that it was implicit in the grant that it was for a period of five year only, the grant having been made on the application of the defendants 2 to 4, who stated in their application that the property had been leased to the plaintiff for five years. It was also argued that in 1946 defendants 2 to 4 xx had applied for permission for a permanent non-agricultural use of the land and when this was refused, they applied on 10-7-1946 to the Collector for extension for the non-agricultura use by f ve years and therein they admitted that the previous permission was for a period of 5 years only. All this, it was contended went to show that the perio of five only years was intended for the operation of the permission.

8. It appears to me that when we have to construe a grant it is not permissible to take into consideratio either the previous correspondence which led to the grant or the conduct of the parties subsequent to the grant. It has been held by the Privy Council in Maharaj Manendrachandra v. Raja Shri. Durga Prasad (19 B.L.R 493) that in construing the terms of the deed evidence of intention of the parties thereto is inadmissible for the question is not what the parties may vae intended but what is the meaning of the words which they use. In Bemmanji v. The Secretary of State of for India, 31 B.L.R.256, it is pointed out that a deed of grant cannot be legitimately construed in the light of previous correspondence between the parties even where one correspondence is recited in the preamble to the deed as it does not thereby become part and parcel thereof. And again,

in 32 B.L.R. 798, Rustumji v. Dhairyavan, it is declared that where the question is one purely of the question of a written contract, the conduct of the parties subsequent to the agreement is irrelevant. It ~~is~~ will be thus seen that the reference made by the learned Assistant Government Pleader to Exhs.41, 42, and 43 is really of no avail. Exh.41 is the application made by defendants 2 to 4 to the Collector on 2-8-1941. I have already given a translation of it above and when strictly construed it does not purport to ask for a permission operative only for five years. All that it says is that the plot had been leased to the present plaintiff for five years and therefore a request was made that the permission for non-agricultural use might be given. I am unable to interpret it as indicating an intention on the part of defendants 2 to 4 to ask for merely temprary non-agricultural use. Exhs.42 and 43 are the applications of defendants 2 to 4. The first is dated 26-1-1946 and the second is dated 10-7-1946. By the first application they asked for permanent permission to use the property for non-agricultural use. This application it appears, seems to have been rejected whereafter they presented an application Exh.43 requesting that atleast a temprary permission for a further period of five years might be granted. These three documents are being utilised by the learned Assistant Government Pleader for the argument that to the knowledge of the defendant 2 to 4 the permission granted in 1941 was only a temporary permission limited to the period of five years. The first objection to these two documents is that having regard to the Privy Council decisions noted above they cannot be made use of to interpret the grant made in 1941. In the second place the plaintiff refuses to be bound by the applications made by the lessors in 1946 because they have been made by them after the lease in favour of the plaintiff had been renewed for 11 years by the lease Exh.40 dated 19-10-1941. Statements and admissions made by

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the lessors aftee the lease are certainly not binding on the lessee. Some sort of explanation is sought to be given by defendants 2 to 4 regarding the misapprehension under which these applications came to be made. Whether the explanation can be expected or not it seems to me that both the objections levelled by the plaintiff against them are substantial and they cannot be taken into consideration in contruing the grant made in 1941.

9. The grant of permission is contained in the order Exh.6 and is further supported by the Sanad or Certificate issued subsequently. I have been referred to a number of inaccuracies in the Sanad and there can be no doubt that where it departs from the order it will have to be interpreted as subordinate to the order. In the first place the Sanad is not dated. Secondly, the order does not say that the non-agricultural assessment has been fixed for a term of five years whereas the certificate in says that it is fixed for a term of five years. Thirdly, the order does not say whether a permanent or a temprary building was allowed. All that is said was that the building should be used for a tea shop only. Fourthly, there is no condition in the order that the non-agricultural assessment is revisable while the Sanad says that on the expiry of the term the assessment would be liable to revision. Fifthly, whereas the order refers to 8 gunthas three yards, that is to say 971 sq.yards, the Sanad refers to 952 sq.yards. Undoubtedly, the Sanad or Certificate had not been carefully prepared in accordance with the order of the Collector and as I said before, the permission being granted by the order, it will have to prevail over the terms of the Sanad wherever there is a conflict.

10. If we have regard mainly to the order of the Collector dated 2-8-1941 we find nothing in it to show that the non-agricultural use was permitted for a limited period. The mremere fact that a building was allowed without an upperstory or a privy for the purpose of a tea shop will not imply that the period was temporary. On the other hand it is pointed out with reference to condition No.2 that a permanent construction was incontemplation because otherwise there was no point in imposing the condition that a certain margin along the perimeter of the plot was to be kept "permanently open to the sky." Even the Sanad as it is does not say that the period is limited for five years. On other hand by imposing the further condition that on the expiry of the period of five years the assessment was liable to revision it was implied that the permission was not for a limited period. What was limited by a Sanad was the liability of the occupant to use the building for a tea shop and to pay non-agricultural assessment at a certain rate for a certan time. Reference eas made to the words " temporarily appropriated " which are used to describe the form of the Sanad. I think, these words, cannot be taken as part of the order itself. which does not contain any such direction. In my opinion, therefore, the order read along with the Sanad does not purport to permit non-agricultural use for a limited period of five years only. As no time is limited recourse can be had to section 68 of Land Revenue Code which says that an occupant is entitled to the use and occupation of his land if the period is unlimited or a survey settlement has been extended to the land perpetuity subject to the conditions imposed.

11. In the result my conclusion is that permission for non-agricultural use had been granted for an unlimited period subject to the conditions imposed in the order Exh.5 dated 2-8-1941. Hence the plaintiff is entitled to the declaration

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qnd injunction claimed. Since, however, defendant 1 may be expected to respect the decision of the Civil Court, no injunction shall be granted against defendant No.1.

12. No other point was arg ed before me and I must therefore allow the appeal.

O r d e r.

The decree of the trial Court is set aside and it is declared that the grant of permission to use the suit property for non-agricultural purpos given on 1-8-1941 by the Collector is for unlimited period. Defendants 2 to 4 shall not interfere with the plaintiff's enjoyment and possession of the property during the subsistence of the lease. The appellant shall get his costs through out from respondent No.1 who shall bear his own costs. Respondents 2 to 4 to bear their own costs.

Dated 18th September, 1952. Sd/- D.G.Palekar,
Assistant Judge.

Suits:
Dharwar.
For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August 1941 is of permanent duration and for injunction restraining Government from demolishing the structure raised thereon and restraining Defendants Nos. 2 to 4 from interfering with the enjoyment and possession of the suit property by the Plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 18888/E
Sachivalaya, Bombay, 25th August 1955.

Read Government Resolution, Legal Department No. 10187/E dated the 20th April 1954.

In the Court of the Civil Judge (Senior Division), Hubli.	Letter from the Government Pleader, High Court No. 3945 dated the 2nd May 1955,
Civil Suit No. 72 of 1950.	
Govind Gopal Pai. ... ... Plaintiff;	
versus	
The State of Bombay and others. ... Defendants.	

stating that the Second Appeal No.111 of 1953 in the suit noted in the margin was decided by the High Court, on the 20th April 1955, when the following order was passed :-

" Appeal dismissed with costs. "

Letter from the Government Pleader, High Court, Bombay, No. 5558, dated the 25th June 1955, forwarding uncertified copies of the judgment.

RESOLUTION : The result of the second appeal is recorded.

By order and in the name of the
Governor of Bombay,

(D.P. SHIKHARE),
Deputy Secretary to Government.

To

The Revenue Department,

The Collector of Dharwar,

The Government Pleader, High Court, Bombay,

cks/28.8. The District Government Pleader, Dharwar.

142

Submitted

25 Tele in S Dharwar 3/57

P 2
26 18 Supdt um 26/3

Rs.As.Ps. Fls. 7
Copying & comparing charges. 2-10-0
Paper charges. 0-0-6
Total 2-10-6

Typed by G.S.Desai.
11 -7-1955
Examined by K.T.Ajricawala.
Read by P.J.Vyas. Rupees two, annas ten and pies six only.

S.Mulherkar
Superintendent D.D.
13-7-1955

Copy applied for on 28/4/55
Copy ready on 14/7/55
Copy delivered on 30-8-55

Assistant Superintendent
30/8

Appeal No. 111 of 1953 from Appellate Decree.

...

The State of Bombay ... ... Appellant.
(Original defendant No. 1).

versus

Govind Gopal Pai ; and others ... ... Respondents.
(Original Plaintiff and defendants Nos. 2 to 4).

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

Second Appeal against the decision of D.G. Palekar, Esquire, Assistant Judge at Dharwar in Appeal No. 338 of 1951 from the decision of B.A. Chougule, Esquire, Civil Judge, Senior Division at Hubli in L.C. Civil Suit No.72 of 1950.

Mr. V.S. Desai Assistant Government Pleader for the Appellant.

Mr. G.P. Murdeshwar, Advocate for Respondent No. 1.

...

Coram : Bavdekar, J.

20th April 1955.

Oral Judgment :

This is a second appeal arising from a suit which had been filed by respondent No.1, who is the owner of a tea shop upon land belonging to defendants Nos. 2 to 4. Defendants Nos. 2 to 4 let out to the plaintiff the land for the first time on the 20th of May 1941, and inasmuch as the plaintiff wanted to erect a tea shop upon the land, defendants Nos. 2 to 4 made an application to the Collector on the 4th of June 1941 for permission to allow the land

to be converted for non-agricultural use, namely, for the purpose of erecting upon it a building for a tea shop. This permission was granted by the Collector on the 2nd of August 1941. It was to hold good from the 1st of August 1941. In the year 1946 when the plaintiff's lease expired, defendants Nos. 2 to 4 made an application to the Collector to give them permission to convert the land permanently for non-agricultural use. They were apparently under the impression that the original permission which had been granted was only for five years. The Collector refused to give the permission. Defendants Nos. 2 to 4 then applied to the Collector for permission to use the land for the same purpose, namely, for the tea shop, for a further period of five years. That application was also refused. Further attempts having proved fruitless, the plaintiff filed the suit from which the present appeal arises contending that the original permission which was granted for converting the land for non-agricultural use was for permanent conversion.

The principal defendant was defendant No. 1, the State of Bombay, and its contention was that the permission which had been granted to defendants Nos. 2 to 4 in the year 1941 was for converting the land for a non-agricultural purpose only for a period of five years. This contention has failed so far, and defendant No. 1 has come in appeal

The only point which is in favour of the contention of defendant No. 1 is that the form which has been used is the form which is used in case of land temporarily appropriated for non- agricultural purposes other than building. But if we look into the sanad itself, there is no condition restricting the use of the land for a building for a tea shop for five years from the date of the grant. The order which was passed by the Collector on the 2nd of August 1941 is to the same effect. It says nothing whatever about the permission being restricted for a period of five years from the date of the order. It may be that defendants Nos. 2 to 4 were under the impression that the

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permission had been granted for a period of five years only; but that obviously appears to have been due to the fact that the sanad metioned that the assessment was liable to be changed at the end of a term of five years. Now, it is one thing to say that the assessment was liable to be changed after the end of a particular period, and another to say that the permission which had been granted was - itself for converting the land for non- agricultural purposes for that much period. There is consequently no substance in the appeal, which is dismissed with costs in favour of respondent No. 1.

.....

By order of the court,

Sd. V.R. Gadkari.

Deputy Registrar.

HIGH COURT APPEALS
CERTIFIED COPY
BOMBAY

True Copy

for Deputy Registrar. 14/7

The 13th day of July 1955.

1233.

Typed by Mr.S.D.Paradkar.

Examined by Mr. R.I.Agiewale. Copying and comparing charges: Rs.As.Ps.Fls. 3- 0- 0

Read by Mr. P.S.Vyas. Paper charges: 0- 0- 6

Total Rs: 3- 0- 6

Copy applied for on 28/4/55

Copy ready on 8/7/55

Copy delivered on 30-8-55

Rupees three,annas nil and pies six only.

Sent by V.P.P. on Rs.a.p.

Assistant Superintendent.
30/8

Superintendent,Decree Department.
8-7-1955.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Wednesday the 20th day of April 1955.

Appeal No.111 of 1953 From Appellate Decree.

(District:Dharwar.)

The State of Bombay.

(Original Defendant.) ----- Appellant.

versus

1.Govind Gopal Pai; 2 Shriniwasrao Narayanrao Chituguppi; 3 Pralhadrarao Narayanrao Chituguppi; 4 Vasantrao Narayanrao Chituguppi;

(Original Plaintiff and Defendants Nos.2 to 4.) --Respondents.

Claim-Rs.65 for all purposes.

The Plaintiff sued for a declaration that the grant of permission to use the suit property for non-agricultural purpose is of permanent duration and to obtain an injunction restraining the Defendant from demololishing the building and restraining Defendants Nos.2 to 4 from interferring in any way with the enjoyment and possession of the suit property by the Plaintiff during the subsistence of the base and to get his costs.

The Original Suit No.72 of 1950 was decided by the Civil Judge (Senior Division) of Hubli who dismissed it with costs.

The Appeal No.338 of 1951 of the District File was decided by the Assistant Judge of Dhrawar who allowed it and set aside the order of the Court of first instance and decreed the suit with costs throughout payable by Respondent No.1 and directed other Respondents to bear their own costs.

An appeal has been admitted in the High Court from the decision of the lower Court.Notice was ordered to issue by the Honourable Mr.Justice Shah on the 29th day of January 1953.

The grounds of objection to the decision appealed against are:-

1.That the lower Appellate Court has erred in law in revising the decree of the trial Court.

2.That it should have been held that the permission for non-agricultural use was for a limited period only.

3.That the application exhibit 41 clearly shows that permission was sought for the purpose of the tea'shop which was to be run for a period of 5 years.

4.That the Collector's order exhibit 5 passed on this application read in the light of the conditions subject to which the permission was granted and in the light of the application exhibit 41 clearly shows that the order granted permission only for a limited period.

5.That the principles and provisions of law applicable to the case are not properly understood and the judicial decisions considered and relied on by the lower AppellateCourt are not properly appreciated.

6.That the subsequent conduct of the parties as evidenced by the subsequent applications exhibit 42 and exhibit 43 and the orders passed thereon is clearly consistent with the case of Defendant No.1.

7.That the reasoning adopted by the lower Court is erroneous and the conclusions arrived at are wrong.

8.That it should have been held that the notice given by the Plaintiff is invalid and the suit must also fail on that ground.

9.That the decree of the lower Court is wrong in law.

Coram:-Bavdekar,J.

For the reasons stated in the accompanying Judgment, the Court confirms the decree passed by the lower appellate Court and dismisses the appeal with costs in favour of

of Respondent No.1.

20-4-1955. Sd/-V.R.Gadkari.

Deputy Registrar.

Bill of costs in the High Court.

By the Appellant	Rs.As.Ps.
Stamps for Memorandum of Appeal	6- 4- 0
Stamps for copies of Order and Judgments	3- 12- 0
Stamps for Vakalatnama (G.P.appeared.)	0- 0- 0
Bhatta for Process	3-12- 0
Sectioner's Fee	49-13- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Printing charges	155 0- 0
Translation Fee	9- 6- 0
Total Rs:	144- 3- 0

By the Respondent	Rs.As.Ps.
Stamps for Vakalatnama	2- 8- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Total Rs:	58-12- 0

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

(Seal)

Sd/-V.R.Gadkari.

Deputy Registrar.

The 20th day of April 1955.

True copy

for Deputy Registrar.

The 8th day of July 1955.

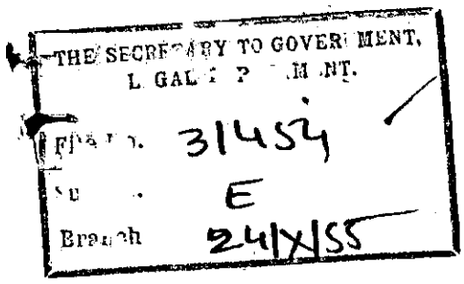
No.S.9/122988-H

Revenue Department,
Sachivalaya, Bombay,
21st October, 1955.

Subject:- Suits
Dharwar
For a declaration that the grant of permission to use the suit site for non-agricultural purposes given on 1st August, 1941 is of permanent duration and for injunction restraining Government from demolishing the structures raised thereon....,

Memorandum

The undersigned presents compliments to the Collector of Dharwar and with reference to Legal Department No.18888/E dated 25th August 1955, is directed to state that as the suit is dismissed with costs he should deposit the plaintiff's costs of the suit and appeals in Court in consultation with the District Government Pleader in accordance with the procedure laid down in rule 87 of the Law Officers rules.



By order and in the name of the
Governor of Bombay,

Assistant Secretary to the Government of
Bombay, Revenue Department.

Copy to the Legal Department.

M.21-10

ORD... matter concerned with
the Legal
... this Dept. ...
... when required.